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PROGRAM REPORT
ELDER PROTECTIVE SERVICES
JULY 1, 1986 THROUGH JUNE 30, 1987

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PROGRAM REPORT
ELDER PROTECTIVE SERVICES
JULY 1, 1986 THROUGH JUNE 30, 1987

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Executive Summary

The Elder Protective Service Program mandated by Chapter 604 (M.G.L. c. 19A ss.14-26) is responsible for providing services to abused and neglected elders of the Commonwealth, age 60 or over. Since July 1983 when the law took effect, reports of abuse or neglect have increased from 1529 in FY '84 to 2607 in FY '87. Elder Abuse is defined as "an act or omission which results in serious physical or emotional injury to an elderly person". Abuse includes physical battering and emotional maltreatment. Neglect includes the deprivation of necessities.

The Protective Services Program is administered by the Executive Office of Elder Affairs, Office of Program Management. The unit is directed by a Program Manager and includes five Regional Supervisors and a Program Specialist. Each Regional Supervisor is responsible for the Protective Services Agencies clustered in one geographical area of the state: North, Central, South, Greater Boston and West. The Program Specialist has responsibility for management of the Protective Services contracts which deal with Elders at Risk, Guardianship and the 24 Hour Elder Abuse Hotline.

Protective Services Delivery is provided by twenty-six Home Care Corporations and one Community Mental Health Center which have been designated by EOEA as Protective Services Agencies. Each designated agency is responsible to: receive and screen reports of abuse and neglect, conduct an assessment and functional evaluation and provide or arrange for protective services. Services provided may be casework, homemaker, home-health aide, transportation, legal assistance, nutrition or other services necessary to alleviate the abuse or neglect.

The Elder Abuse Hotline operates 24 Hours a day, 7 days a week to receive reports of abuse or neglect. Each designated Protective Services Agency has staff on-call to respond to emergency situations which occur after business hours. EOEA staff can also be contacted through the Hotline in an emergency situation.

The Protective Services Program provides counseling services to vulnerable elders through contracts with community agencies under the Elder at Risk Model. These agencies intervene to offer services to elders who may not be abused or neglected but who are at risk due to other factors.

The Guardianship Program has been established state wide and is intended to serve elders who have been abused or neglected. EOEA contracts with six family service agencies to provide guardianship and conservatorship services to at risk, incompetent elders who have no other resources available to them.

The Executive Office of Elder Affairs maintains a strong commitment to abused and neglected elders of the Commonwealth. The Protective Services Program has grown and improved its capacity to meet the needs of these elders. During fiscal year 1987, several changes were implemented to refine the Protective Services system. Legislation was filed to amend aspects of the Protective Service Law, Chapter 604, to reflect the experiences of protective social workers: additional safeguards were included to ensure that elders' rights were protected in court proceedings, the reporting of serious abuse to the District Attorney's was facilitated and the list of mandated reporters was changed to include emergency medical technicians and firefighters. Other changes, also proposed, would allow the protective service social workers to protect vulnerable elders while ensuring their right to self determination.

Also during fiscal year 1987, provisions were made to reimburse designated protective service agencies for the purchase of mental health assessments for abused or neglected elders. Reimbursement can be provided when an elder's capacity to consent to services is doubtful, one or more protective services are required to assure the elder's safety, no other resource is available to secure a competency evaluation of the elder and a petition to the court under 651 CMR 5.22 or 651 CMR 5.23 is indicated.

The Guardianship program was expanded to include the Central and Western parts of the state during this year. Contracts were established with two family service agencies to potentially provide guardianship and conservatorship services to an additional forty elders in need of those services.

EOEA sponsored the first Protective Services Recognition Day and Conference in order to acknowledge the dedication and professionalism of the protective services staff. Valerie Kennedy of Elder Home Care of Worcester was presented with the Edward R. McCarthy award for exceptional performance and commitment to Protective Services. In addition, workshops were held to provide an opportunity for learning and sharing with professional colleagues.

THE ELDER PROTECTIVE SERVICE PROGRAM

Organization

The Executive Office of Elder Affairs' Protective Services Program includes the following components directly administered or monitored by EOEA:

Protective Services Unit: Attached to EOEA's Office of Programs, Division of Program Management, this unit includes one Protective Services Manager, five Regional Supervisors, and one Program Developer.

Designated Protective Services Agencies: EOEA has designated twenty-seven private, non-profit agencies to serve as protective services agencies. All but one are Home Care Corporations.

Elder Abuse Hotline: This component is operated under contract to a private, non-profit social service organization. It operates on a 24 hour a day, 7 day a week basis.

Elder-at-Risk Program: This component provides counseling services available in Boston and Worcester for elders who do not fall under Chapter 604 but who are at risk.

Guardianship Services: These services are for a limited number of elders needing guardianship to prevent abuse or neglect.

Homeless Elders Project: This is a specialized program for homeless elders in Boston. The project provides housing search assistance, arranging for health and social services, assistance with personal care needs and information and referral services.

The Protective Services Program is administered by the Protective Services Manager under the Office of Programs, Division of Program Management. All policies are determined by the Secretary of Elder Affairs.

Staff from the Executive Office of Elder Affairs has been assigned to each of the five regions within the Commonwealth. These Regional Supervisors provide program monitoring and evaluation and clinical support and consultation. In addition, EOEA is responsible for establishing regulations and case standards and ensuring the implementation of these in the field.

The Elder Protective Services Program operates in twenty-seven (27) protective services areas which are congruent with the Executive Office of Elder Affairs' home care service areas. Protective Services casework is provided by over 50 full time equivalent protective services caseworkers statewide (as of 6/30/87).

IMPLEMENTATION

The structure of the Elder Protective Services Program allows the sharing of responsibilities between the Executive Office of Elder Affairs and the designated agencies. The roles of EOEA and the Protective Services Agencies and the activities involved in meeting these roles and responsibilities are discussed below.

A. The Designated Protective Services Agencies have the responsibility of delivering Protective Services at the local level. Their major activities and program objectives are:

1. Employment of Protective Services Caseworkers

At the end of FY 87 there were over 50 full-time equivalent caseworker positions. Although the Executive Office of Elder Affairs established a standard job description and professional qualifications for protective caseworkers, they are not employees of EOEA. Rather they are employees of their respective Protective Services Agencies. The Protective Services Agency maintains qualification standards, supervises the work of caseworkers, and provides on-going training to staff.

2. Provision of Protective Services

A report of elder abuse can be received from mandated reporters, community members, or from an abused elder. These reports are received by either the 24-hour Elder Abuse Hotline or by the Protective Services Agency. Each report is screened to determine if an emergency exists, and if the report warrants an assessment under M.G.L. c. 19A, ss. 14-26. Many cases that are "screened" out as not being reportable abuse cases are, in fact, channelled into the regular home care service process and may receive service through the State Home Care Program.

Protective Services caseworkers have primary responsibility for conducting assessments of the elder (to determine if abuse has occurred), completing functional evaluations of the elder (to determine mental, physical, and social functioning), and creating a service plan. Depending upon availability, the caseworker, also provides or arranges the provision of a range of social and health services.

Such support service include: homemaker, transportation, chore, nutrition, and health services. Agencies also provide supervision and monitoring to assure that services are provided in an effective manner. Throughout this process, service provision is contingent upon the elders informed consent. (Refer to the flow chart - Attachment A.)

Protective Services are terminated either when the abuse/neglect is alleviated or when the elder makes the informed choice of refusing protective services. Though protective services may end, clients may, if appropriate continue to receive home care services.

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3. Legal Interventions

Reporting Serious Abuse & Death to District Attorneys

Chapter 604 mandates the reporting of serious abuse and abuse related deaths to District Attorneys. Standardized procedures and reporting forms are used for reports to the District Attorney. Once a report is filed, the District Attorney's office makes a determination regarding legal action while the protective services worker continues to offer services to protect the elder. In FY 87, EOEa filed legislation to amend Chapter 604 to further facilitate information sharing on serious cases with the District Attorneys.

Protective Orders

Protective orders through the Probate Court system may be utilized in situations where an abused or neglected elderly person lacks the capacity to consent to protective services. In such circumstances, sections 20(a) & (b) of Chapter 604 enable designated Protective Services Agencies to petition the Probate Court for a finding regarding the elder's capacity to consent. The court may then issue an order for the provision of protective services which utilizes alternatives that are the least restrictive to the elderly person.

Chapter 604 and EOEa regulations provide procedures for both emergency and non-emergency protective orders.

4. Community Education

Protective Services Agencies have the responsibility to inform other professionals in the community of the mandatory reporting law and procedures. Protective Services Agencies have done extensive training and community outreach to ensure that professionals have current information on elder protective services. Training sessions have been provided for hospitals, Visiting Nurse/Home Health Associations, police departments, mental health centers, senior centers, Councils on Aging and other social service organizations. Training and community education are important in order to maintain awareness of elder protective services as well as to develop links with community agencies who also serve elders.

B. The Executive Office of Elder Affairs has the responsibility for coordinating the effective and efficient delivery of Elder Protective Services on a state-wide basis. The major activities and program responsibilities of EOEa are:

1. Program Monitoring

Through the five Regional Supervisors, each designated Protective Services Agency is monitored for quality of service provision and for adherence to EOEa Protective Services Regulations (651 CMR 5.00).

Monitoring occurs on a monthly basis by random examination of case records at each designated agency. Written reports provide feedback to each agency on the agency's compliance with casework and regulatory standards.

2. Clinical Consultation and Training

The Program Manager and the Regional Supervisors are available to all designated agencies on a 24 hour basis for clinical consultation on difficult abuse situations and on emergency situations.

Training on clinical and regulatory issues occurs on a regular basis both through monthly regional meetings and periodic seminars.

3. Data Collection

EOEA collects monthly statistics from each designated agency regarding the number and types of reports received, the results of assessments conducted, and the number of cases opened and closed during the month. These statistics are aggregated on both a regional and state-wide basis.

Between July 1, 1986 and June 30, 1987 (FY'87), the Protective Services Program received 2607 reports of abuse. Refer to Table I for further information on FY'87 statistics.

Since the program began operation in FY'84, reports have increased by 68.6%.

4. Community Education

Community education is the primary means of increasing public awareness of elder abuse. EOEa provides general information regarding elder abuse and specific information regarding reporting requirements and procedures to the general public. In addition, EOEa staff have presented at local and national conferences, to community groups, and to professional organizations.

The Regional Supervisors also work with each designated Protective Services Agency to insure that mandated reporters in each area are knowledgeable about reporting and available services.

Changes and Accomplishments Since 1983

Since the inception of the Elder Protective Services Program in July of 1983, the program has expanded to meet the growing needs of elders at risk. Some of the changes include:

- Funding and Implementation of Emergency Protective Services which are designed to maximize the availability of critical services to vulnerable elders 24 Hours a day.
- Standardization of qualifications for Elder Protective Service Caseworkers.
- Development of an Assessment and Functional Evaluation Tool which assists social workers in determining the existence of abuse/neglect and the level of risk to the elder.
- Revision of the Hotline Response Procedures to ensure a prompt response to crisis situations.
- Establishment of an annual Protective Services Recognition Day and Conference in order to acknowledge the professionalism of protective services staff.
- Development and expansion of the Guardianship Program to provide services to at risk, incompetent elders who lack a family member or an appropriate person to serve as guardian.
- Utilization of existing Elder at Risk contracts to ensure that services are available to vulnerable elders who may not be eligible for Home Care services or protective services.
- Implementation of a reimbursement mechanism for mental health assessments when an abused elder's capacity to consent to services is doubtful, no other resource is available to secure an assessment and a petition to the court is indicated.
- House bill 114 was filed with the legislature in order to improve the implementation of protective services to elders.
- Revision and improvement of the monthly statistical reporting form in order to improve our capacity to evaluate the program's effectiveness.
- Expansion of training for staff at the designated protective services agencies - topics included Legal Training and non-violent Intervention.
- Development of a demonstration project for homeless elders which provides intensive casework intervention and advocacy. During FY '87 150 homeless elders were served - 46 placed in permanent housing, 19 in temporary housing.

ADDITIONAL PROGRAMS

ELDER ABUSE HOTLINE

(Toll Free Number in Massachusetts: 1-800-922-2275)

Chapter 604 mandates the Executive Office of Elder Affairs to establish a mechanism for the receipt of reports on a 24-hour per day basis. Further, it requires the designated protective services agencies to have the capacity to respond to an emergency and to arrange for services to alleviate the danger of abuse to an elder on a 24-hour per day basis.

The Elder Abuse Hotline operated 24-hours per day, 365 days a year to receive reports of Elder Abuse or Neglect as well as to provide information and referral services to elders. Each designated protective services agency is required to have one staff person on-call by pager after business hours and to have administrative back-up available. If the staff of the Elder Abuse Hotline determines that an immediate emergency response is necessary, the Hotline pages the local caseworker. That designated agency staff person then responds in order to alleviate the risk to the elder.

EOEA also maintains after-hours coverage for emergency protective services situations. Each night and on the weekend, one Regional Supervisor carries a pager in order to be available for consultation. The Protective Services Program Manager also carries a pager and serves as administrative back-up.

GUARDIANSHIP/CONSERVATORSHIP PROGRAM

The statewide Guardianship/Conservatorship Program operates as a component of the Elder Protective Services Program and was intended to serve abused and neglected elders as defined by M.G.L. Chapter 19A ss.14-26.

In 1985, when the program began, EOEa contracted with four family service agencies to provide guardianship and conservatorship services. In 1986, these services were expanded statewide with the addition of an agency in Worcester and one in Springfield. Currently, there is the capacity to serve 100 elders. There are, at this time, 58 elders in the program: 14 conservatorships, 32 guardianships and 12 estates being served.

This is a program of last resort and therefore admission is stringently monitored. This is for two reasons. The primary reason is because guardianship and conservatorship are protections utilized only in extreme situations when all less restrictive alternatives to ensure an elder's safety have been exhausted. The second reason for careful screening is because of the relatively small number of available slots which must be available for the worst situations.

The referral process is multi-tiered. First, the case is screened at the level of the designated agency by the worker and supervisor. It is then screened by the Regional Protective Services Supervisor. At this point it is very common for cases to be refused access due to inappropriateness or because there are alternatives still to be explored. A final decision is reached through consultation with the Program Coordinator, a staff attorney and the Protective Service Program Manager.

The criteria for admission are:

1. No other appropriate person
2. Few financial resources or resources are not accessible
3. Lack of guardianship could result in serious injury, exploitation or death of elder
4. All other alternatives have been explored
5. Medical certificate of incompetency

The guardianship agencies provide all services necessary to carry out the orders of the court and to meet the needs of the elder. These include financial management, arranging for services, social casework and management of personal affairs.

In monitoring these agencies, EOEa places great emphasis on how well the agency is ensuring the elder's safety. Safety is to be ensured by implementing the least restrictive means while involving the elder in the decision making process as much as possible. The major goals of this program are: 1) to protect the non-competent elder from harm and exploitation; and 2) to preserve, as much as possible, the non-competent elder's rights to self-determination and dignity.

ELDERS AT RISK PROGRAM

Since 1985, EOEA has been the contracting agency for the former Department of Social Services Elder Protective contracts. There are twelve agencies involved in the current Elders At Risk Program, including 9 Boston and 3 Worcester agencies. The program continues to be funded through a Private-Public partnership of 75% public funds to 25% private funds.

The goal of the EAR contract is to target frail, self-neglecting, marginally competent elders living in the community who are often not otherwise eligible and/or willing to accept services. Individual and/or family alcoholism and mental health problems which impact on the elder's functional status are appropriate issues for inclusion under this contract. Intervention designed to alleviate problems which otherwise might lead to the elder's eviction is also seen as appropriate by EOEA. Our intention is to provide problem focused, goal oriented counseling/casework designed to alleviate the factors placing the elder at risk.

The key indicator for deciding appropriateness for inclusion in the EAR program is whether the client is at risk due to any existing problems. Operationally defined, an elder is "at risk" if that elder would not be able to safely remain in the community without agency intervention.

EOEA continues its work to strengthen the program and to address the needs of at risk elders in all the communities of the Commonwealth.

THE HOMELESS PROGRAM

In March, 1986, a demonstration project to provide services to homeless elders in Boston was initiated. Funding was provided to Senior Home Care, Boston III for two social workers to provide intensive casework and advocacy for these elders.

From March, 1986, until July, 1987, this program served approximately 150 clients. Of the population served, 70% were men and 30% women. It was found that alcoholism was present in 65% of the cases and mental health problems in approximately 50%. Medical problems related to aging, alcoholism and unsanitary living conditions were evident in 75% of these cases.

Most of these elders require intensive casework intervention. Services provided can include health care coordination, transportation, assistance in the housing search, placement in temporary emergency housing, placement in permanent housing, assessment of the need for guardianship or conservatorship and home care services. In addition, caseworkers assist clients in accessing income and benefits for which they may be eligible, in obtaining legal assistance and in receiving evaluation and treatment.

The Homeless Elders Program has been successful in obtaining temporary and permanent housing for some homeless elders. During FY'87, 46 elders were placed in permanent housing and 19 in temporary housing. Improved coordination with other citywide homeless efforts and shelters is one of EOEA's primary goals for the coming year.

Initiatives for FY '88

Since the inception of the Protective Services Program in 1983, EOEa has maintained a strong commitment to serving abused and neglected elders statewide. The program has continually been refined and improved through development of new programs and critical evaluation of existing ones.

Initiatives for FY '88 include:

- Development of a task force to study guardianship policy.
- Establishment of criteria and guidelines for intrastate transfer of protective services cases.
- Development, in collaboration with the Administration on Aging, of a Regional agreement for the transfer of Protective Services cases to other states within New England.
- Coordination and collaboration with the Department of Mental Health to facilitate delivery of mental health services to elders.
- Participation on a committee to study the issue of self-neglecting elders and development of strategies for providing services to this population.
- Comprehensive review and amendment, when appropriate, of the EOEa Protective Services Regulations.
- Development of protocol for handling cases of abuse or neglect which may interface with cases that involve the Department of Public Health.
- Participation on a working group with the Executive Office of Human Services, the Department of Mental Health and the Department of Public Welfare to coordinate services to homeless elders.
- Development of a video training library for Protective Services Staff

SAMPLE PATHWAY

FOR
PROTECTIVE SERVICE CASE IN MASSACHUSETTS

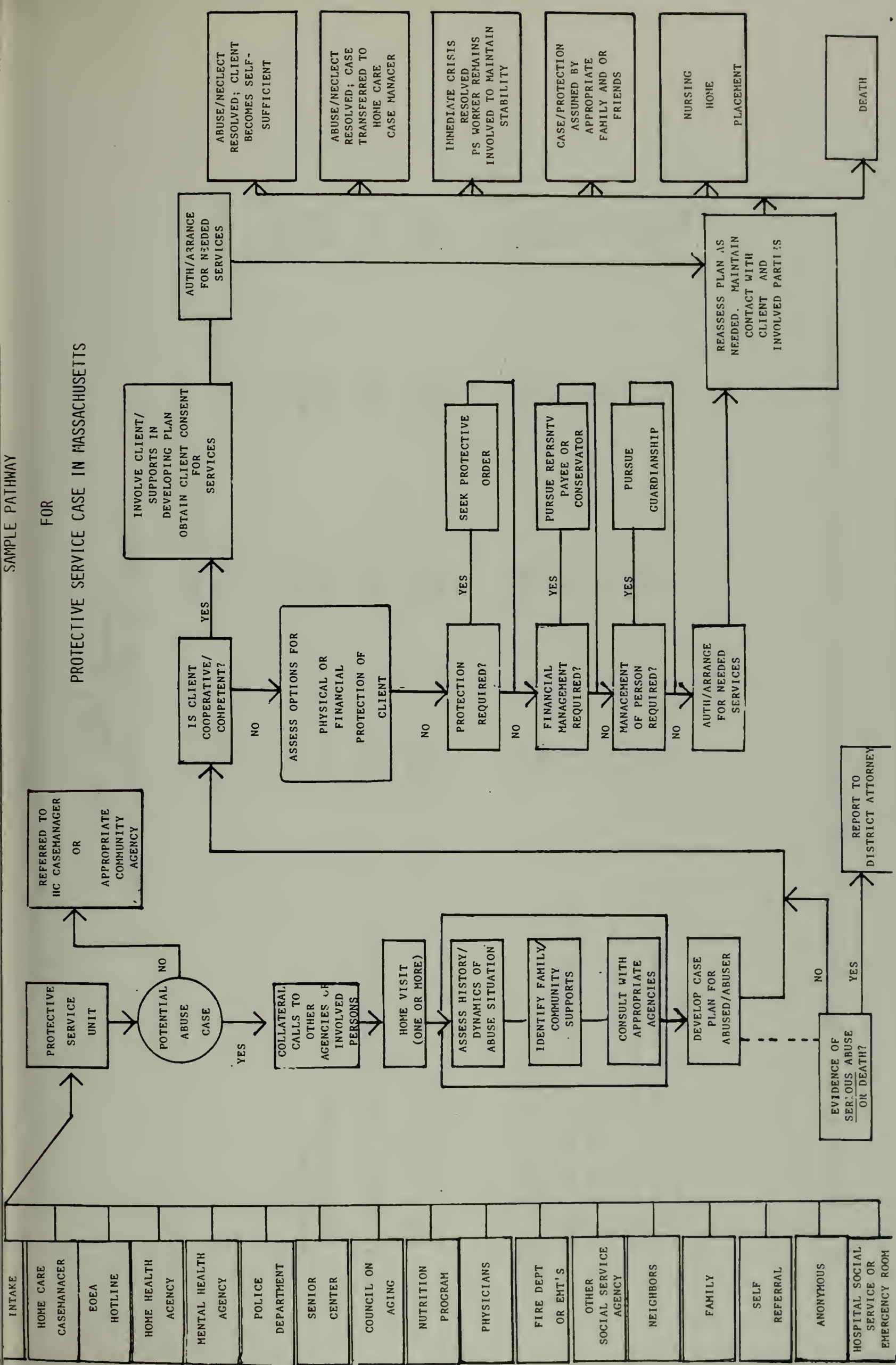


TABLE I
ELDER ABUSE SUMMARY
JULY 1, 1986 - JUNE 30, 1987

	Physical* <u>Abuse</u>	Emotional* <u>Abuse</u>	<u>Neglect*</u>	<u>Totals</u>
Abuse Reports				
mandated	758	726	1123	2607
non-mandated	564	488	853	1905
	194	238	270	702
Assessments (Investigations)	659	637	916	2212
Confirmed	494	430	578	1502
Not confirmed	165	207	338	710
Abuse Cases Closed	496	385	589	1470
death of client	38	31	97	166
placement in long term care	89	34	197	320
client moved	12	11	20	43
transfer to casemanagement	31	25	39	95
problem resolved	182	181	146	509
client refused services	119	78	57	254
other	25	25	33	83

* As defined in 651 CMR 5.00 - Protective Services Regulations (See Appendix B.)

APPENDIX A

THE COMMONWEALTH OF MASSACHUSETTS
ADVANCE COPY 1982 ACTS AND RESOLVES
MICHAEL JOSEPH CONNOLLY, SECRETARY OF STATE

Chap. 604. AN ACT PROVIDING FURTHER PROTECTION OF
ELDERLY PERSONS.

Be it enacted, etc., as follows:

SECTION 1. Chapter 19A of the General Laws is hereby amended by adding the following thirteen sections:-

Section 14. For the purposes of sections fourteen to twenty-seven, inclusive, the following words and terms shall, unless the context otherwise requires, have the following meaning:

"Abuse", an act or omission which results in serious physical or emotional injury to an elderly person; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.

"Caretaker", the person responsible for the care of an elderly person, which responsibility may arise as the result of a family relationship, or by a voluntary or contractual duty undertaken on behalf of an elderly person, or may arise by a fiduciary duty imposed by law.

"Conservator", a person who is appointed to manage the estate of a person pursuant to chapter two hundred and one.

"Court", the probate and family court.

"Department", the department of elder affairs.

"Elderly person", an individual who is sixty years of age or over.

"Emergency", a situation in which an elderly person is living in conditions which present a substantial risk of death or immediate and serious physical or mental harm.

"Geriatric evaluation process", a team of medical psychological, psychiatric, social work professionals designated or established by the department for the purpose of conducting comprehensive physical, mental, social evaluation of an elderly person.

"Guardian", a person who has qualified as a guardian of an elderly person pursuant to chapter two hundred and one, but shall not include a guardian ad litem.

"Protected person", an elderly person for whom a conservator or guardian has been appointed or other protective order has been made.

"Protective services", services which are necessary to prevent, eliminate or remedy the effects of abuse to an elderly person.

"Protective services agency", a public or nonprofit private

agency, corporation, board, or organization designated by the department pursuant to this chapter to furnish protective services to elderly persons.

Section 15. (a) Any physician, medical intern, dentist, nurse, family counselor, probation officer, social worker, policeman, licensed psychologist, coroner, registered physical therapist, registered occupational therapist, osteopath, podiatrist, executive director of a licensed home health aid agency or executive director of a homemaker service agency who has reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse, shall immediately make a verbal report of such information or cause a report to be made to the department or its designated agency and shall within forty-eight hours make a written report to the department or its designated agency. Any person so required to make such reports who fails to do so shall be punished by a fine of not more than one thousand dollars.

(b) The executive director of a home care corporation, licensed home health agency or homemaker service agency shall establish procedures within such agency to ensure that homemakers, home health aides, case managers or other staff of said agency who have reasonable cause to believe that an elderly person has been abused shall report such case to the executive director of the corporation or agency. The executive director shall immediately make a verbal report of such information or cause a report to be made to the department or its designated agency and shall within forty-eight hours make a written report to the department or its designated agency.

(c) In addition to a person required to report under the provisions of subsection (a) of this section, any other person may make such a report to the department or its designated agency, if any such person has reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse.

(d) No person required to report pursuant to the provisions of subsection (a) shall be liable in any civil or criminal action by reason of such report. No other person making such report pursuant to the provisions of subsection (b) or (c) shall be liable in any civil or criminal action by reason of such report if it was made in good faith. No employer or supervisor may discharge, demote, transfer, reduce pay, benefits or work privileges, prepare a negative work performance evaluation, or take any other action detrimental to an employee or supervisee who files a report in accordance with the provisions of this section by reason of such report.

(e) Reports made pursuant to subsections (a) and (b) shall contain the name, address and approximate age of the elderly person who is the subject of the report, information regarding the nature and extent of the abuse, the name of the person's caretaker, if known, any medical treatment being received or immediately required, if known, any other information the report-

er believes to be relevant to the investigation, and the name and address of the reporter and where said reporter may be contacted, if the reporter wishes to provide said information. The department shall publicize the provisions of this section and the process by which reports of abuse shall be made.

Section 16. (a) Subject to appropriation, the department shall develop a coordinated system of protective services for elderly persons who are determined to be abused. In planning this system, the department shall require input from the department of social services, the existing protective service agencies and other agencies currently involved in the provision of social, health, legal, nutritional, and other services to the elderly, as well as elderly advocacy organizations.

(b) Within this protective services system, the department shall establish a mechanism for the receipt of reports made pursuant to section fifteen which shall operate and be accessible on a twenty-four hour per day basis. If the department or its designated agency has reasonable cause to believe that an elderly person has died as a result of abuse, the death shall immediately be reported to the district attorney of the county in which the elderly person resided. Within forty-five days of the receipt of a report made pursuant to subsection (a) of said section fifteen, the department or its designated agency shall notify the reporter, in writing, of its response to the report. Such notification shall be made to a person who makes a report pursuant to subsection (c) of said section fifteen if said reporter so requests.

(c) Subject to appropriation, the department shall designate at least one local agency to act on behalf of the department with a geographic area as defined by the department. The department may designate any public agency or private nonprofit organization which has the capacity to implement a service plan through direct access to social, health and mental health services. The department shall utilize existing resources and services of public and nonprofit private agencies in providing protective services. The department shall insure that assessment, evaluation and service delivery shall be provided through the designated local agency closest to the elderly person's community.

In designating agencies, the department shall insure that: (1) persons conducting assessment, evaluation and service delivery have demonstrated experience in providing protective and other social health services to elders, have these protective functions as their primary employment responsibility, and have other professional qualifications as determined by the secretary; (2) continuity of care under one protective services worker is assured throughout assessment, evaluation and services delivery to the extent possible; and (3) the department and the designated agencies have the capacity to respond to an emergency and provide or arrange for services to alleviate the immediate danger of abuse of an elderly person on twenty-four hours per day basis.

The department shall monitor assessments, evaluations, and the

provision of protective services by designated local agencies.

(d) The department shall issue regulations establishing criteria and procedures for the designation of protective services agencies or for the termination or designation or redesignation of protective services agencies.

(e) The department shall be responsible for continuing coordination and supervision of the system. In carrying out these duties, the department shall, subject to appropriation: (1) adopt rules and regulations for the system; (2) continuously monitor the effectiveness of the system and perform evaluative research about it; and (3) utilize grants from federal, state and other public and private sources to support the system.

Section 17. A protective services agency is authorized:

(1) to receive and investigate reports of abuse;

(2) to furnish protective services to an elderly person with his or her consent;

(3) to petition the court for appointment of a conservator or guardian or for issuance of an emergency order for protective services;

(4) to furnish protective services to an elderly person on an emergency basis as hereinafter provided;

(5) to furnish protective services to a protected person with the consent of such person's guardian or conservator;

(6) to serve as conservator, guardian, or temporary guardian of a protected person; and

(7) to perform all other functions determined by the department to be necessary for the administration of this chapter.

Section 18. (a) The department or its designated agency shall assess and evaluate the information reported pursuant to the provisions of section fifteen.

Such assessment shall include a visit to the residence of the elderly person who is the subject of the report and may include consultations with appropriate service agencies and individuals who have knowledge of the elderly person's situation including the person filing the report. The elderly person who is the subject of the report shall receive written notice that an assessment is being conducted and shall have the right to review the file and report developed as a result of the assessment.

If the assessment results in a determination that the elderly person is suffering from abuse, the department or the designated agency shall evaluate the elderly person's functional capacity, situation, and resources and shall develop a service plan for the provision of protective services. Said plan shall be appropriate to the needs of the elderly person and shall utilize the least restrictive alternatives.

The department shall adopt rules and regulations establishing time limits for the completion of assessments and evaluations and for the implementation of service plans; provided, however, that if an emergency exists, assessments shall be completed within twenty-four hours of the receipt of the report.

If an assessment results in a determination that the elderly

person has suffered serious abuse, the department or designated agency shall report such determination to the district attorney of the county within which the elderly person resides within forty-eight hours. The district attorney may investigate and decide whether to initiate criminal proceedings.

(b) The department or the designated agency shall provide or arrange for protective services in accordance with the service plan developed pursuant to the provisions of subsection (a). Protective services shall include, but not be limited to, the following: the capacity to respond to an emergency; protective services case work; the capacity to provide or arrange for homemaker, home-health aide, transportation, legal assistance, counseling and nutrition services and guardianship and conservatorship, or protective order through the court.

The department or the designated agency is authorized to provide or arrange for additional services necessary to assist and protect elderly persons who have been abused, including, but not limited to the following: emergency housing, medical care, mental health care, emergency financial assistance, foster care and adult day care services.

Section 19. (a) Any elderly person who requests or affirmatively consents to the receipt of protective services may receive said services. If the person withdraws or refuses consent, the service shall not be provided or continued except as provided in section twenty.

(b) No person shall interfere with the provision of protective services to an elderly person who requests or consents to receive such services. In the event that interference occurs on a continuing basis, the department, a protective services agency, or the public guardian may petition the court to enjoin such interference.

Section 20. (a) If the department or its designated agency has reasonable cause to believe that an elderly person is suffering from abuse and lacks the capacity to consent to the provision of protective services, the department or its designated agency may petition the court for a finding that the elderly person is incapable of consenting to the provision of protective services. Said petition shall set forth the specific facts upon which the department or the designated agency relied in making the determination. The court shall hold a hearing on the matter within fourteen days of the filing of the petition. The court shall give notice to the elderly person who is the subject of the petition at least five days prior to the date set for the hearing. The elderly person who is the subject of the petition shall have the right to be present, be represented by counsel, present evidence, and examine and cross-examine witnesses. If the elderly person who is the subject of the petition is indigent, the court shall appoint counsel to represent such elderly person. If the court determines that the elderly person lacks the capacity to waive the right to counsel, the court shall appoint a guardian ad litem to represent the interests of such elderly person. If,

after hearing, the court determines, based upon clear and convincing evidence, that such elderly person has been abused, is in need of protective services and lacks the capacity to consent and no other person who is authorized to consent is available or willing to consent, the court may appoint a conservator, guardian, or other person authorized to consent to the provision of protective services; provided, however, that the court shall establish the least restrictive form of fiduciary representation that will satisfy the needs of such elderly person. In addition to or in the alternative, the court may issue an order requiring the provision of services. The order shall contain a specific description of the services to be provided and insure that the least restrictive alternatives are utilized.

(b) If an emergency exists and the department, its designated agency, a member of the immediate family or a caretaker has reasonable cause to believe that an elderly person is suffering from abuse and lacks the capacity to consent to the provision of protective services, said department, designated agency, member of the immediate family or caretaker may petition the court for an emergency order of protective services. The court shall give notice to the elderly person who is the subject of the petition at least twenty-four hours prior to the hearing. The court may dispense with notice upon finding that immediate and reasonable foreseeable physical harm to the individual or others will result from the twenty-four hour delay and that reasonable attempts have been made to give such notice. If after the hearing, the court determines, based on clear and convincing evidence, that the elderly person has been or is being abused, that an emergency exists, and that the elderly person lacks the capacity to consent to the provision of services, the court may order the provision of protective services on an emergency basis. The court shall order only those services necessary to remove the conditions creating the emergency and shall specifically designate the authorized services in its order. The order for emergency protective services shall remain in effect for a period not to exceed seventy-two hours. Said order may be extended for an additional seventy-two hour period if the court finds that the extension is necessary to remove the emergency.

(c) The court shall not order an institutional placement or change of residence unless it finds that no less restrictive alternative will meet the needs of the elderly person. No elderly person may be committed to a mental health facility pursuant to this chapter. The elderly person or his or her court-appointed representative, the department, or the designated agency may petition to have any order issued pursuant to subsection (a) or (b) set aside or modified at any time.

Section 21. (a) Subject to appropriation, the department shall establish a geriatric evaluation process for the purpose of conducting a comprehensive physical, mental, or social evaluation of an elderly person for whom a petition has been filed in a court for appointment of a conservator or guardian, under the

provisions of clause (3) of section seventeen, or for an emergency order for protective services.

(b) The evaluation of an elderly person conducted by the geriatric evaluation process shall include at least the following:

(1) the name and address of the place where the person is residing and of the person or agency, if any, who is providing services at present;

(2) a description of the treatment and services, if any, presently being provided to the person;

(3) an evaluation of the person's present physical, mental, and social conditions; and

(4) a recommendation concerning the least restrictive course of services, care or treatment consistent with the person's needs.

(c) Subject to appropriation, the cost of this evaluation shall be borne by the department.

(d) Such elderly person shall have the right, at his own expense to secure an independent medical and psychological or psychiatric examination relevant to the issue involved in any hearing under this section and to present a report of his independent evaluation or the evaluator's personal testimony as evidence at the hearing.

Section 22. The department shall establish, by regulation, financial eligibility guidelines which provide a procedure for reimbursement by elderly persons for all or part of cost of protective services. If the department or the designated agency determines, pursuant to section eighteen, that an elderly person who is in need of protective services has sufficient resources to pay for part or all of the cost of protective services, it shall initiate said procedures for reimbursement. If the department or designated agency determines that an elderly person does not have sufficient resources, no reimbursement for any such costs shall be charged to the elderly person.

No elderly person shall be required to reimburse the department for part or all of the cost of protective services unless he or she has been notified prior to the commencement of service provision that a reimbursement will be charged. No elderly person shall be required to reimburse the department for protective services before service provision commences.

Section 23. (a) Except as otherwise provided in this section, all records containing personal data which are created, collected, used, maintained or disseminated pursuant to this chapter shall not be public records, and shall be governed by the provisions of chapter sixty-six A, the notice provisions of section sixty-three of chapter thirty and the enforcement provisions of section three B of chapter two hundred and fourteen.

(b) If the department, any designated agency, or any other agency obligated to make an assessment under this chapter determines that the allegations in a report cannot be substantiated, it shall within three months of such determination, either (i) destroy said report and any other records containing perso-

nal data created because of the receipt of said report or (ii) physically remove therefrom all personal identifiers; provided, however, that the department, the designated agency or any other agency obligated to make assessments may create and hold whatever statistical records it needs for purposes of planning and reporting, as may be prescribed by regulations adopted by the department pursuant to section two of chapter thirty. Each government agency shall promulgate regulations prescribing the manner of creating and holding its own such statistical records, and the department shall adopt such regulations for itself and any designated agency.

(c) The department, any designated agency, or any other agency obligated to make an assessment under this chapter shall inform in writing an individual, upon his request, whether he is a data subject, as that term is defined in section one of chapter sixty-six A, with respect to records created or maintained under this chapter, and if so, the department or agency shall make such data fully available to him or his authorized representative, upon his request, in a form comprehensible to him, unless doing so is prohibited or excused under the provisions of this or any other statute. In making any disclosure or information to a data subject the department or agency may remove personal identifiers relating to a third person, except where such third person is an officer or employee of a government or non-governmental department or agency obligated to make assessments under this chapter.

(d) Any agent or employee of the department, a designated agency, or any other agency obligated to make an assessment under this chapter who violates the provisions of chapter sixty-six A, as modified by this section, with respect to records created or maintained under this chapter shall be punished by a fine of not more than five hundred dollars, or, if harm shall have resulted to anyone whose privacy was sought to be protected by the provision violated, by a fine of not more than one thousand dollars, and, if such agent or employee is employed by the commonwealth, he shall also be subject to administrative disciplinary action pursuant to regulations adopted by the department or agency under section two of chapter thirty A.

Section 24. Within one hundred and twenty days following the end of each fiscal year, the department shall submit a report to the governor, the general court and the public which shall include a description of the activities of the department and all designated agencies pursuant to sections fourteen to twenty-seven, inclusive, during the preceding fiscal year. Said report shall contain statistical information about the number and types of reports received under section fifteen; the results of the assessments and evaluations conducted and the amount, type and costs of services provided under section eighteen; and information on the quality of services provided and the results of such services in terms of alleviating abuse. Said report shall identify problems that may arise in the implementation of this chapter and

shall contain the recommendations of the department for action on the part of the legislature.

Section 25. The secretary shall adopt and from time to time revise rules and regulations for the implementation of the provisions of sections fifteen to twenty-four, inclusive.

Section 26. Nothing in this chapter shall be construed to be a limitation of the powers and responsibilities assigned by law to other departments or agencies.

SECTION 1A. The department of elder affairs shall, subject to appropriation, implement the provisions of section one of this act on or before July first, nineteen hundred and eighty-three.

SECTION 2. If any provision of the act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared severable.

Approved December 28, 1982.

EMERGENCY LETTER - December 29, 1982 @ 2:42 P.M.

APPENDIX B



The Commonwealth of Massachusetts

#43

Secretary of State

REGULATION FILING AND PUBLICATION

- 1. ~~REGULATION CHAPTER NUMBER AND NUMBER~~: 651 CMR 5.00 Elder Abuse Program
- 2. ~~NAME OF AGENCY~~: Department of Elder Affairs
- 3. ~~RELEVANT LAW/REGULATION SUMMARY~~: States the general purposes and requirements of this regulation as well as the persons, organizations and businesses affected.

This regulation establishes criteria and procedures for the Department of Elder Affairs to designate, terminate or redesignate elder abuse protective service agencies and to implement protective service plans for the elder abuse program.

- 4. ~~AGENCY CONTACT FOR ADDITIONAL INFORMATION~~: Mark A. Gray, Jr., General Counsel
MA 02111
Address: Department of Elder Affairs, 38 Chauncy St. Boston, Telephone 727-7750
- 5. ~~STATUTORY AUTHORITY~~: M.G.L. c. 19A, s. 14-2b
The Regulations Division will complete the following 6 and 7:
- 6. ~~REGISTRATION~~: Massachusetts Register Number 395 Date 12/22/83
Code of Massachusetts Regulation Volume 16 Page
- 7. ~~EFFECTIVE DATE~~: 12/22/83

FISCAL EFFECT STATEMENT FILED YES X NO

A TRUE COPY ATTACHED
Michael Joseph Connolly
MICHAEL JOSEPH CONNOLLY
SECRETARY OF STATE
DATE 12/5/83 CLERK PTM

651 CMR 5.00: REGULATIONS GOVERNING THE ELDER ABUSE REPORTING AND PROTECTIVE SERVICES PROGRAM

Section

- 5.01 Scope and Purpose
- 5.02 Definitions
- 5.03 Functions and Responsibilities of the Department in the Administration of the Elder Protective Services Program
- 5.04 Functions and Responsibilities of the Protective Services Agency in Carrying Out the Elder Protective Services Program
- 5.05 Designation of Protective Services Agencies
- 5.06 Termination of Designation
- 5.07 Availability of Funds
- 5.08 Reporting Process/Intake
- 5.09 Who Must Report
- 5.10 Contents of Reports
- 5.11 Screening of Reports
- 5.12 Screening Decisions
- 5.13 Notification to Protective Services Agencies of Reports
- 5.14 Assessment of Reports
- 5.15 Action Upon Finding No Reportable Condition Following Assessment
- 5.16 Conducting a Functional Evaluation
- 5.17 Financial Eligibility for Protective Services
- 5.18 Development of a Service Plan
- 5.19 Obtaining Consent for Protective Services
- 5.20 Implementation of Service Plan with Client's Consent
- 5.21 Actions When Consent Not Available
- 5.22 Actions If Client Lacks the Capacity to Consent/Emergency Report
- 5.23 Actions If Client Lacks the Capacity to Consent/Non-Emergency Report
- 5.24 Provisions Applicable to Petitions to the Court Under M.G.L. c. 19A, ss. 20(a) or 20(b)
- 5.25 Follow-Up and Reassessment of Protective Services Plan
- 5.26 Providing Documentation of CaseWork and Services
- 5.27 Reporting to District Attorneys and Time Frames For Reporting
- 5.28 Financial and Administrative Responsibilities of Protective Services Agencies Under the Protective Services Program
- 5.29 Privacy and Confidentiality Requirements
- 5.30 Non-Discrimination in Service Delivery
- 5.31 Non-Discrimination in Employment
- 5.32 Protection of Clients
- 5.33 Affirmative Action
- 5.34 Waivers
- 5.35 Annual Report

5.01: Scope and Purpose

651 CMR 5.00 is promulgated under the authority of M.G.L. c. 19A, ss. 16(d), 16(e), 18(a) and 22 (Chapter 604 of the Acts of 1982). 651 CMR 5.00 establishes criteria and procedures for the designation, redesignation, or termination of Protective Services Agencies designated by the Department, set forth the basis for determining those instances in which a report of Abuse or neglect may or must be made to the Department or its designated Protective Services Agencies, specify the manner in which reports must be made, specify the action which must be taken in receiving, investigating, and otherwise responding to such reports, including the provision of Protective Services to Elderly Persons who are determined to be Abused.

Please note that reports of abuse of elderly persons in any infirmary maintained in a town, convalescent or nursing home, rest home, charitable home for the aged or intermediate care facility for the mentally retarded, as defined in M.G.L. c. 111, s. 71 shall continue to be made to the Department of Public Health pursuant to M.G.L. c. 111, ss. 72(F) - 72(L) and shall not be made to the Department of Elder Affairs under M.G.L. c. 19A, ss. 15 and 16.

651 CMR: DEPARTMENT OF ELDER AFFAIRS

5.02: Definitions

As used in 651 CMR 5.00, unless the context requires otherwise, these terms shall have the following meanings:

(1) Abuse. An act or omission which results in serious physical or emotional injury to an elderly person; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.

(2) Capacity to Respond to an Emergency. The capacity of a Protective Services Agency to, in an Emergency, provide Protective Services Casework; complete an assessment of an abused elderly person within twenty-four (24) hours of the receipt of the report; provide or arrange for the provision of one or more other appropriate Protective Services to an elderly person suffering from a reportable condition to alleviate the immediate danger of abuse on an emergency basis, including but not limited to a petition to the Court for an emergency order of protective services pursuant to M.G.L. c. 19A, s. 20(b), where appropriate.

(3) Caretaker. The person responsible for the care of an elderly person, which responsibility may arise as the result of a family relationship, or by a voluntary or contractual duty undertaken on behalf of an elderly person, or may arise by a fiduciary duty imposed by law.

(a) Responsibility arising from a family relationship. A husband, wife, son, daughter, brother, or sister, or other relative of an elderly person shall be presumed to be a caretaker if (s)he is living with the elderly person on a regular basis or is otherwise acting in the role of caretaker by providing substantial assistance to the elderly person which would lead a reasonable person to believe that (s)he is acting in the role of caretaker.

(b) Responsibility arising from a fiduciary relationship imposed by law. A Guardian of the person and estate of an elderly person appointed by the Probate Court pursuant to M.G.L. c. 201 shall be a caretaker. A conservator of an elderly person appointed by the Probate Court pursuant to M.G.L. c. 201, shall be caretaker of said elderly person to the extent that (s)he must apply the assets of the estate of the elderly person to provide the necessities essential for the physical, intellectual and emotional well-being of the elderly person. The attorney-in-fact, holding a power of attorney or durable power of attorney pursuant to M.G.L. c. 201B, shall be caretaker of the elderly person granting such a power to the extent that the power of attorney or durable power of attorney requires her/him to apply the assets of the elderly person to provide the necessities essential for the physical, intellectual and emotional well-being of the elderly person.

(c) Responsibility arising from a contractual relationship. A person who is responsible for the care of an elderly person and receives monetary or personal benefit or gains as a result of a bargained for agreement with the elderly person to act as a Caretaker shall be a caretaker. A homemaker, home health aide, case manager, visiting nurse or employee of a Homemaker Service Agency, Home Care Corporation or Agency, or Visiting Nurses Association shall not be a caretaker under this definition.

(d) Responsibility arising out of the voluntary assumption of the duties of Caretaker. A person who undertakes a voluntary duty of care for an Elderly Person shall be presumed not to be a caretaker unless one or more of the following criteria are met by the reputed caretaker:

1. The reputed caretaker is living in the household of the elderly person;

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2. The reputed caretaker is related to the elderly person and (s)he has acted or is acting by providing substantial assistance or in such a manner as to lead a reasonable person to believe that (s)he is acting as a caretaker;
 3. The care being rendered by the reputed caretaker is a permanent and not temporary duration in that the reputed caretaker maintains a physical presence in the household on a regular basis.
 4. The elderly person by her/his actions, statements, or behavior, indicates reliance upon the reputed caretaker for care in such a manner that a reasonable person would believe that the reputed caretaker is being relied upon by the elderly person to care for her/him;
 5. The reputed caretaker, by her/his actions, statements, or behavior, indicates voluntary assumption of the obligation of caretaker in such a manner that a reasonable person would believe that the reputed caretaker is being relied upon to care for the elderly person;
- (4) Comprehensive Needs Assessment Process (CNAP). An instrument, provided by the Department, designed to assess the physical, emotional, and social functioning of prospective and current clients; determine the specific needs of each client; and facilitate the development of an appropriate service plan.
- (5) Conservator. A person who is appointed to manage the estate of a person pursuant to M.G.L. c. 201.
- (6) Conservatorship Services. Services to be provided by an individual, public agency authorized by law, or non-profit corporation, within the meaning of I.R.C. s. 501(c)(3) (1954), as amended, whose corporate charter authorizes the corporation to act as a conservator of an elderly person pursuant to the provisions of M.G.L. c. 201, whether the disabilities of such elderly person are due to advanced age, physical incapacity, mental weakness, or mental retardation to the extent and for the duration determined by the Court. Such services shall be provided only to an elderly person who, as the result of an assessment and functional evaluation by a Protective Services Agency, has been determined to be suffering from a reportable condition; is in need of Conservatorship Services; has themselves or through the order of the Court consented to the provision of such services; and is otherwise eligible to receive such services. These services shall be provided in the best interest of the elderly person and shall include taking all actions necessary in seeking and accepting appointment as Conservator; coordinating the Geriatric Evaluation Process established under M.G.L. c. 19A, s. 21; making all financial decisions regarding the real and personal property of the elderly person within the limits of the order of the Court and the laws of the Commonwealth; representing such elderly person as attorney-in-fact in legal actions as permitted by law; and doing all things necessary and appropriate to properly discharge the duties and responsibilities arising out of each such appointment as Conservator.
- (7) Counseling Services. Communication with elderly persons intended to prevent or alleviate Abuse. Interaction between a Protective Services Caseworker or other qualified person and an Eligible Elderly Person and/or Abuser intended to prevent or alleviate abuse and/or the effects of abuse.
- (8) Court. The Probate and Family Court of the Commonwealth.
- (9) Data Subject. An individual to whom personal data refers. This term shall not include corporations, corporate trusts, or other similar entities.

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(10) Department. The Department of Elder Affairs.

(11) Designation Agreement. An agreement between the Department and the Protective Services Agency providing for designation of such agency as the Protective Services Agency for a Protective Services area, which provides for such Agency to provide one or more Protective Services either directly or through sub-contract with funding through the Department, or by interagency agreement, or by use of available existing services.

(12) Elderly Person. An individual who is sixty (60) years of age or over.

(13) Eligible Elderly Person. An elderly person who, as a result of an assessment and functional evaluation by a Protective Services Agency, has been determined to be suffering from a reportable condition, is in need of one or more Protective Services; has themselves or through the provisions of M.G.L. c. 19A, ss. 20(a) and 20(b) consented to the provision of one or more Protective Services; and is otherwise eligible to receive one or more of such services.

(14) Emergency. A situation in which an elderly person is living in conditions which present a substantial risk of death or immediate and serious physical or mental harm.

(15) Emergency Report. A written or oral report, received by the Department or Protective Services Agency, from which it is determined, through screening, that a situation in which an elderly person is living presents a substantial risk of death or immediate and serious physical injury or serious mental harm to the elderly person.

(16) Geriatric Evaluation Process. A team of licensed medical, psychological, psychiatric, social work professionals designated or established by the Department for the purpose of conducting comprehensive physical, mental or social evaluation of an elderly person further defined in 651 CMR 5.24.

(17) Guardian. A person who has qualified as a guardian of an elderly person pursuant to M.G.L. c. 201, but shall not include a guardian ad Litem.

(18) Guardianship Services. Services to be provided by an individual, public agency authorized by law or non-profit corporation, within the meaning of I.R.C. s. 501(c)(3) (1954), as amended, whose corporate charter authorizes the corporation to act as a guardian of an elderly person with disabilities pursuant to the provisions of M.G.L. c. 201, whether the disabilities of such an elderly person are due to mental illness, or mental retardation, to the extent and for the duration determined by the Court. Such services shall be provided only to an elderly person who, as the result of an assessment and functional evaluation by a Protective Services Agency, has been determined to be suffering from a reportable condition; is in need of Guardianship Services; lacks the capacity to consent to the provision of these services, and no other person who is authorized to consent is available or willing to consent; has no family or other person available or willing to serve in the capacity of guardian; and is otherwise eligible to receive such services. These services shall be provided in the best interests of the elderly person and shall include taking all actions necessary in seeking and accepting appointment as guardian, coordinating of the Geriatric Evaluation Process established under M.G.L. c. 19A, s. 21, and shall include making personal care, medical and financial decisions for the elderly person within the limits of the order of the Court and the laws of the Commonwealth; representing such elderly person as attorney-in-fact in legal actions as permitted by law; and doing all

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things necessary and appropriate to properly discharge the duties and responsibilities arising out of each such appointment as guardian.

(19) Holder. The Department and each Protective Services Agency which collects, uses, maintains or disseminates personal data as a result of performing a governmental or public function or purpose under M.G.L. c. 19A, ss. 14 - 26. Each Protective Services Agency is a Holder and subject to the provisions of 651 CMR 5.00 only with respect to personal data held under contract or arrangement with the Department under the Elder Protective Services Program.

(20) Home Care Corporation. That unit of a designated area agency on aging charged with responsibility for the home care program; an Independent Home Care Corporation organized under M.G.L. c. 180, or any other agency or organization which is supported by funds available through the Department to assure provision of home care services to elderly persons, within a designated planning and service area in the Commonwealth. A Home Care Corporation performs case management and information and referral services under the Home Care Program. The governing bodies of Home Care Corporations shall have a majority of its members, e.g., at least fifty-one (51) percent, appointed by the Council on Aging of the cities and towns within the Home Care Corporation's service area. Exceptions will be made for Home Care Corporations in the City of Boston and with prior Department approval in those areas in which the number of Councils on Aging is insufficient to justify the fifty-one (51) percent requirement. A majority of the Home Care Corporation's governing body shall be persons sixty (60) years of age or older, and to the extent feasible, recipients of or having familiarity with the home care services.

(21) Home Health Aide Services. Services provided to an eligible elderly person in her/his home, through a Certified Home Health Agency which complies with the requirements of Section 1861(c) of the Social Security Act, and 42 C.F.R. 405.1201. The primary functions of Home Health Aide Services are to perform therapeutic supportive and/or compensatory health and personal care tasks and activities for clients in their homes. Home Health Aide Services must be provided by a certified home health agency and assigned and performed under the supervision of a registered professional nurse or other appropriate professional in accordance with the plan of care reviewed by the Protective Services Agency. For Home Health Aide Services, the plan of care will be developed in consultation with the appropriate staff of the certified home health agency. Home health agencies are required to report to the Protective Services Agency any observed changes in the client's condition or family situation which may affect her/his plan of care.

Health and personal care tasks which may be performed by a home health aide include but are not limited to:

- (a) Dressing and wound care, including care of decubitus and stasis ulcers;
- (b) Routine catheter care, including irrigation;
- (c) Assistance with medications specifically ordered by a physician which are ordinarily self-administered;
- (d) Assistance with or supervision of tasks associated with activities of daily living (e.g. bathing, toileting, grooming), dressing, transferring and use of adaptive equipment where indicated;
- (e) Training clients and primary caregivers in necessary self-help skills.

While the primary functions of Home Health Aide Services are to provide health and personal care services, it may be deemed efficient under certain conditions, as reflected in the plan of care, that certain assigned household activities be performed in conjunction with a home health aide visit. These ancillary services may include:

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- (a) Performing light cleaning tasks in areas of the home used by the client, e.g. dusting, vacuuming, damp mopping;
- (b) Assisting with and/or supervising the preparation of a shopping list and preparing or assisting in the preparation of meals appropriate to a client's dietary needs and financial circumstances; and
- (c) Doing personal laundry (towels, bedlinens, bedclothes and other clothing).

(22) Homemaker Service. A service designed to help maintain normal household functioning when a family's or individual's life is threatened with disruption by long or short term illness, disability, social maladjustment, or problems which require assistance in the home to sustain independent living. Homemaker Service is concerned primarily with home management and assistance with activities of daily living for a person who has a multiplicity of needs. For Homemaker Service to be authorized, an individual must have a need for one or more of the stated activities, except in the case of socialization which can only be provided in conjunction with one or more other activities. Homemaker Service requires trained personnel working under agency supervision. Activities are limited to the following: shopping; menu planning and meal preparation, including special diets; light housekeeping, including but not limited to vacuuming, laundry, dusting, dry mopping, dishwashing, cleaning the kitchen and bathroom, changing beds; training in home management skills; socialization; and personal care services as defined below:

Personal care services refers to activities designed to assist functionally impaired clients to remain at home. The activities performed to assist the client may include the following: assisting with tasks of personal hygiene (including sponge bathing, hair grooming, shampooing and combing; and foot care, excluding nail cutting); cleaning of personal appliances, such as eye glasses and dentures; shaving; assisting with bed pan routines; assisting with eating; assisting with ambulating; assisting with transfers (excluding transfers if the client is totally dependent).

All personal care tasks must be reviewed for appropriateness by the Home Care Registered Nurse Consultant or be recommended by a physician.

(23) Legal Assistance. Legal advice and representation provided to an eligible elderly person by an attorney in civil matters (and to the extent feasible, counseling and other appropriate assistance by a paralegal, or law student under the supervision of an attorney), including counseling or representation by a non-lawyer where permitted by law, to Elderly Persons who are determined to be abused.

(24) Mandated Reporter Subject to Fine. Any physician licensed under M.G.L. c. 112, s. 2; medical intern; dentist licensed under M.G.L. c. 112, s. 45; registered nurse licensed under M.G.L. c. 112, s. 74; practical nurse licensed under M.G.L. c. 112, s. 74; social worker licensed under M.G.L. c. 112, s. 131; public employee employed as a social worker who meets the equivalency requirements for licensing under M.G.L. c. 112, s. 131; physical therapist as licensed under M.G.L. c. 112, s. 23B; occupational therapist licensed under M.G.L. c. 112, s. 23B; osteopath licensed under M.G.L. c. 112, ss. 2 and 10; podiatrist licensed under M.G.L. c. 112, s. 16; family counselor; probation officer; police officer; coroner; executive director of a licensed home health aide agency or executive director of a Homemaker Service agency who has Reasonable Cause to Believe that an elderly person is suffering from or has died as the result of a reportable condition.

(25) Mandated Reporter Not Subject to Fine. Any executive director of a Home Care Corporation who has reasonable cause to believe that

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an elderly person is suffering or has died as the result of a reportable condition. Any homemaker, home health aide, case manager or other staff of a Home Care Corporation, licensed home health agency, or homemaker service agency who is not a licensed social worker, nurse, licensed psychologist, or family counselor, who has reasonable cause to believe that an elderly person is suffering, or has died from a reportable condition, shall be included in this category. Those occupations set forth in the previous sentence shall report such case to the executive director of the Home Care Corporation or agency.

(26) Nutrition Project. An organization which is the recipient of a grant from an area agency on aging to provide Nutrition Services or which has the administrative authority under contract to provide Nutrition Services under Title III-C of the Older Americans Act, as amended.

(27) Nutrition Services. Those federally funded services to be provided by Nutrition Projects to eligible elderly persons under Title III-C of the Older Americans Act, as amended, and those services provided to eligible elderly persons under the statefunded nutrition program in which certain funded costs to sponsoring agencies are paid through the Department. These services shall include, but not be limited to, congregate meals (a meal provided in a congregate setting to eligible elderly persons which meet the requirements set by the Department in 651 CMR 4.06) and home delivered meals (a meal which is furnished by a sponsoring agency to an eligible elderly person who is homebound by reason of illness, incapacitating disability, or isolation which meets the requirements set by the Department in 651 CMR 4.06).

(28) Personal Data. Any information concerning an individual which, because of identifying number, mark or description, can be readily associated with a particular individual; provided, however, that such information is not contained in a Public Record, as defined in M.G.L. c. 4, s. 7, clause 26. Personal data shall not include intelligence information, evaluative information or criminal offender record information as defined in M.G.L. c. 6, s. 167.

(29) Personal Data System. A system of records operated by the Department and each Protective Services Agency, which system is organized such that data are retrievable by use of the identity of the Data Subject.

(30) Protected Person. An elderly person for whom a protector, conservator or guardian has been appointed or other protective order has been made.

(31) Protector. A person or organization appointed by the Court pursuant to M.G.L. c. 19A, ss. 20(a) or 20(b) as a fiduciary for the purposes of consenting to the provision of Protective Services when an abused elderly person is in need of one or more Protective Services and lacks capacity to consent to such service(s).

(32) Protective Services. Services which are necessary to prevent, eliminate or remedy the effects of abuse to an elderly person. Subject to appropriation, these services shall include: capacity to respond to an emergency; Protective Services Casework, including counseling; Nutrition Services; Guardianship; Conservatorship; protective order through the Court, Homemaker Services, Home Health Aide Services, Transportation Services and Legal Assistance.

(33) Protective Services Agency. A public or nonprofit private agency, corporation, board, or organization designated by the Department pursuant to M.G.L. c. 19A, s. 16 to furnish Protective Services to an eligible elderly person.

5.02: continued

(34) Protective Services Casework. Services provided to an elderly person by a Protective Services Agency including: conducting an assessment to determine if an elderly person is suffering from abuse; developing an evaluation of the elderly person's functional capacity, situation and resources; developing a service plan; providing or arranging for protective services to an eligible elderly person with her/his consent or with consent established in accordance with the provisions of M.G.L. c. 19A, ss. 20(a) or 20(b); providing information and referral to appropriate agencies; having the capacity to respond to an emergency; and providing counseling to elderly persons regarding the alleviation or prevention of abuse and availability of services.

(35) Protective Services Caseworker. An employee of a Protective Services Agency who performs intake and/or assessment, functional evaluation and service planning under the Elder Protective Services Program.

(36) Protective Services Program. The system of reporting of abuse of elderly persons and provision of Protective Services authorized to be carried out by the Department pursuant to M.G.L. c. 19A, ss. 14 - 26, subject to appropriation.

(37) Public Records. Any document made or received by an officer or employee of the Commonwealth or of any authority established by the General Court to serve a public purpose unless it falls within the exceptions contained in M.G.L. c. 4, s. 6, clause 26.

(38) Reasonable Cause to Believe. A basis for judgment that rests on specific facts, either directly observed or obtained from reliable sources, that supports a belief that a particular event probably took place or a particular condition probably exists.

(39) Reportable Condition.

(a) Acts. Acts include either or both of the following:

1. Physical Abuse: The non-accidental infliction of serious physical injury to an elderly person.
2. Emotional Abuse: The non-accidental infliction of serious emotional injury to an elderly person.

(b) Omissions. Omissions include the following:

Neglect: The failure or refusal by a caretaker to provide one or more of the necessities essential for physical, intellectual, and emotional well-being, such as food, clothing, shelter, social contact, personal care, and medical care, which results in serious physical or emotional injury to an elderly person.

(40) Serious Abuse. Reportable conditions to be reported to the District Attorney pursuant to M.G.L. c. 19A, s. 18(a) shall include, but not be limited to, the following:

- (a) Death;
- (b) Brain damage;
- (c) Loss or substantial impairment of a bodily function or organ;
- (d) Substantial disfigurement;
- (e) Rape, sexual misuse or sexual exploitation.

(41) Serious Emotional Injury. An extreme emotional condition such as a severe state of anxiety, fear, depression or withdrawal, development of post traumatic syndrome, including but not limited to symptoms resulting from being forced to engage in sexual relations by force, threat of force or duress.

(42) Serious Physical Injury.

- (a) Death, or
- (b) Fracture of a bone; extensive skin bruising; nontrivial bleed-

5.02: continued

ing; unreasonable decubiti; puncture wound; impairment of any system or organ; symptoms resulting from the use of medications or chemical restraints which harm the elderly person; and any other non-trivial injury including malnutrition and dehydration.

(43) Transportation Services. Services designed to transport eligible elderly persons to and from community facilities (such as senior centers and nutrition sites), and community organizations for the purpose of socialization or applying for and receiving services, shopping, and for non-medical emergencies. Transportation Services include provision of public, private para-transit, or other forms of transportation not otherwise available pursuant to the Medicare or Medicaid programs.

5.03: Functions and Responsibilities of the Department in the Administration of the Elder Protective Services Program

(1) The Department shall, subject to appropriation, maintain a state-wide system to receive reports of the abuse of elderly persons, which shall be accessible on a twenty-four (24) hour per day basis. Further, the Department shall, subject to appropriation, develop a coordinated system of Protective Services for elderly persons suffering from a reportable condition(s) pursuant to M.G.L. c. 19A, s. 16.

(2) General Responsibilities of the Department. Subject to appropriation, the general responsibilities of the Department under the Protective Services Program shall include, but not be limited to the following:

- (a) Establish a mechanism to receive reports of abuse of elderly persons on a twenty-four (24) hour per day basis.
- (b) Designate, redesignate and terminate Protective Services Agencies;
- (c) Continually coordinate and supervise the Protective Services Program;
- (d) Adopt rules and regulations for the Protective Services Program;
- (e) Continuously monitor the effectiveness of the Protective Services Program and conduct evaluative research about it;
- (f) Utilize grants from federal, state, and other public and private sources to support the Protective Services Program;
- (g) Screen reports of abuse of elderly persons received and refer cases to Protective Services Agencies for assessment, functional evaluation, and implementation of a service plan, where appropriate;
- (h) Seek protective orders through the Court, where appropriate;
- (i) Contract with Protective Services Agencies and other organizations and individuals, as appropriate, to implement the Protective Services Program;
- (j) Appoint regional supervisors who shall provide monitoring, technical assistance, training, clinical advising, and assistance in responding to an emergency;
- (k) Perform all other functions necessary for the administration of the Protective Services Program.

5.04: Functions and Responsibilities of the Protective Services Agency in Carrying Out the Protective Services Program

(1) Subject to appropriation, the general responsibilities of the Protective Services Agency shall include, but not be limited to, the following:

- (a) Receive reports of abuse of elderly persons directly from mandated reporters subject to fine, mandated reporters not subject to fine, other persons, and the Department;
- (b) Screen such reports to determine whether there is reasonable cause to believe that an elderly person is suffering from or has died from abuse, and determine whether the case is an emergency

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or non-emergency situation;

(c) Forward a copy of each intake form to the Department within forty-eight (48) hours of receipt of each report;

(d) Where an emergency exists, have the capacity to respond to an emergency; if no reportable condition is found, and if services are needed or requested, refer the elderly person to an appropriate agency(s);

(e) In a non-emergency, conduct and complete an assessment of the allegedly abused elderly person within seven (7) calendar days of receiving the report. The assessment shall include a visit to the residence of the elderly person who is the subject of the report and consultation with appropriate service agencies and individuals who have knowledge of the elderly person's situation. If no reportable condition is found, and if services are needed or requested, refer the elderly person to an appropriate agency(s);

(f) Where an assessment results in a finding that a reportable condition exists, complete an evaluation of the person's functional capacity, situation, and resources and develop a service plan for the provision of Protective Services which is:

1. appropriate to the needs of the elderly person; and
2. utilizes the least restrictive service alternative(s);

(g) Determine the financial eligibility of the abused elderly person for purposes of collecting a sliding fee for the provision of certain Protective Services, other than Protective Services Casework, funded through the Department;

(h) If informed consent can be obtained from an elderly person suffering from a reportable condition, implement the service plan for the provision of one or more Protective Services;

(i) If informed consent for provision of Protective Services cannot be obtained due to the lack of capacity to consent by the elderly person, petition directly for a protective order through the Court pursuant to M.G.L. c. 19A, s. 20(a); provide Protective Services as ordered by the Court;

(j) Have the capacity to directly provide Protective Services Casework (including counseling);

(k) Provide or arrange for the provision of a Geriatric Evaluation as defined in 651 CMR 5.02(15) and further defined in 651 CMR 5.24 for the purpose of conducting a comprehensive physical, mental, or social evaluation of an abused elderly person for whom a petition has been filed, or will be filed for a protective order through the Court pursuant to M.G.L. c. 19A, ss. 20(a) or 20(b) or for the appointment of a conservator or guardian;

(l) Refer determinations of serious abuse to the District Attorney of the County where the abused elderly person resides within forty-eight (48) hours of the determination that serious abuse has occurred;

(m) Report cases of death of an elderly person as the result of Abuse immediately to the District Attorney and the Department;

(n) Provide or arrange for the provision of Protective Services or other services where available and in accordance with the service plan with consent of the elderly person, or upon the order of the Court pursuant to M.G.L. c. 19A, ss. 20(a) or 20(b);

(o) Contract with the Department, and other organizations and individuals, as appropriate, to implement and maintain the Protective Services Program;

(p) Perform all other functions determined by the Department to be necessary for the administration of the Protective Services Program;

(q) Comply with regulations developed by the Department to implement and maintain the Protective Services Program.

5.05: Designation of Protective Services Agencies

(1) Types of Agencies that May Be Designated. The Department may designate as a Protective Services-Agency any public agency or private non-profit organization which has the capacity to implement a service plan through access to social, health and mental health services. The Department and the Protective Services Agency shall cooperate in utilizing resources and services of public and non-profit private agencies in providing Protective Services. A Protective Services Agency may be an agency whose single purpose is to administer programs for elderly persons or a multi-purpose agency with the ability and capacity to carry out the Protective Services Program.

(2) Procedures Prior to Designation. Prior to designating a Protective Services Agency, the Department may, in its discretion:

(a) Consider the views of the unit(s) of general purpose local government and area agency on aging within the Protective Services area regarding the capacity of the bidding agency or organization to carry out the responsibilities of the Protective Services Program;

(b) Conduct an on-site assessment to determine whether the Protective Services Agency or organization which is being considered has the capacity to perform all of the functions of a Protective Services Agency under the Protective Services Program;

(c) Designate a Protective Services Agency to serve more than one Protective Services area if, in its judgment, no agency or organization is qualified to serve as the Protective Services Agency in a given area.

(3) Method and Duration of Designation. The Department shall designate Protective Services Agencies for a maximum period of three (3) years. Each designation may be reviewed at least annually. Designation will be made by a letter signed by the Secretary which shall accompany the written agreement between the Department and the Protective Services Agency. The Protective Services Agency may not delegate to another agency the authority to award or administer Protective Services funds under this designation.

(4) Protective Services Geographic Areas. The Department shall designate at least one public agency or private non-profit organization to act on behalf of the Department as a Protective Services Agency for a Protective Services area. There shall be twenty-seven (27) Protective Services areas including the following cities and towns.

Cities and Towns Covered:

Region IA

Adams, Alford, Becket, Cheshire, Clarksburg, Dalton, Egremont, Florida, Great Barrington, Hancock, Hinsdale, Lanesborough, Lee, Lenox, Monterey, Mount Washington, New Ashford, New Marlborough, North Adams, Otis, Peru, Pittsfield, Richmond, Sandisfield, Savoy, Sheffield, Stockbridge, Tyringham, Washington, West Stockbridge, Williamstown, Windsor

Region IB

Ashfield, Athol, Bernardston, Buckland, Charlemont, Colrain, Conway, Deerfield, Erving, Gill, Greenfield, Hawley, Heath, Leverett, Leyden, Monroe, Montague, New Salem, Northfield, Orange, Petersham, Phillipston, Rowe, Royalston, Shelburne, Shutesbury, Sunderland, Warwick, Wendell, Whately

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Region IC

Amherst, Blandford, Chester, Chesterfield, Cummington, Easthampton, Goshen, Granville, Hadley, Hatfield, Huntington, Middlefield, Montgomery, Northampton, Pelham, Plainfield, Russell, Southampton, Southwick, Tolland, Westfield, Westhampton, Williamsburg, Worthington

Region ID

Belchertown, Chicopee, Granby, Holyoke, Ludlow, South Hadley, Ware

Region IE

Agawam, Brimfield, East Longmeadow, Hampden, Holland, Longmeadow, Monson, Palmer, Springfield, Wales, West Springfield, Wilbraham

Region IIA

Ashburnham, Ashby, Ayer, Berlin, Bolton, Clinton, Fitchburg, Gardner, Groton, Hubbardston, Lancaster, Leominster, Lunenburg, Pepperell, Princeton, Shirley, Sterling, Templeton, Townsend, Westminster, Winchendon

Region IIB

Auburn, Barre, Boylston, Grafton, Hardwick, Holden, Leicester, Millbury, New Braintree, Oakham, Paxton, Rutland, Shrewsbury, West Boylston, Worcester

Region IIC

Bellingham, Blackstone, Brookfield, Charlton, Douglas, Dudley, East Brookfield, Franklin, Hopedale, Medway, Mendon, Milford, Milville, Northbridge, North Brookfield, Oxford, Southbridge, Spencer, Sturbridge, Sutton, Upton, Uxbridge, Warren, Webster, West Brookfield

Region IIIA

Beverly, Essex, Gloucester, Hamilton, Ipswich, Manchester, Rockport, Topsfield, Wenham

Region IIIB

Danvers, Marblehead, Middleton, Peabody, Salem

Region IIIC

Lynn, Lynnfield, Nahant, Saugus, Swampscott

Region IIID

Chelsea, Revere, Winthrop

Region IIIE

Everett, Malden, Medford, Melrose, North Reading, Reading, Stoneham, Wakefield

Region IIIF

Cambridge, Somerville

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Region IIIG

Acton, Arlington, Bedford, Boxborough, Burlington, Carlisle, Concord, Harvard, Lexington, Lincoln, Littleton, Maynard, Stow, Wilmington, Winchester, Woburn

Region IIIH

Belmont, Brookline, Needham, Newton, Waltham, Watertown, Wellesley, Weston

Region IIIJ

Ashland, Dover, Framingham, Holliston, Hopkinton, Hudson, Marlborough, Natick, Northborough, Sherborn, Southborough, Sudbury, Wayland, Westborough

Region IIIK

Clinton, Dedham, Foxborough, Medfield, Millis, Norfolk, Norwood, Plainville, Sharon, Walpole, Westwood, Wrentham

Region IIIL

Braintree, Cohasset, Hingham, Holbrook, Hull, Milton, Norwell, Quincy, Randolph, Scituate, Weymouth

Region IVA

Abington, Avon, Bridgewater, Brockton, Carver, Duxbury, East Bridgewater, Easton, Halifax, Hanover, Hanson, Kingston, Lakeville, Marshfield, Middleboro, Pembroke, Plymouth, Plympton, Rockland, Stoughton, Wareham, West Bridgewater, Whitman

Region IVB

Attleboro, Berkley, Dighton, Fall River, Freetown, Mansfield, North Attleboro, Norton, Raynham, Rehoboth, Seekonk, Somerset, Swansea, Taunton, Westport

Region IVC

Achusnet, Dartmouth, Fairhaven, Gosnold, Marion, Mattapoisett, New Bedford, Rochester

Region IVD

Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Gay Head, Harwich, Mashpee, Nantucket, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, Yarmouth

Region V

Amesbury, Andover, Billerica, Boxford, Cheimsford, Dracut, Dunstable, Georgetown, Groveland, Haverhill, Lawrence, Lowell, Merrimack, Methuen, Newbury, Newburyport, North Andover, Rowley, Salisbury, Tewksbury, Tyngsborough, Westford, West Newbury

Region VIA

Hyde Park, South Jamaica Plain, Roslindale, West Roxbury, West Mattapan

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Region VIB

Allston, Back Bay, Brighton, Fenway, Jamaica Plain, North Dorchester, Parker Hill, Roxbury, South End

Region VIC

Beacon Hill/West End, Charlestown, Chinatown, Columbia Point, Dorchester, East Boston, East Mattapan, North End, South Boston.

5.06: Termination of Designation

(1) Termination for Convenience. Either party may terminate a designation agreement without cause upon provision of written notice to the other at least sixty (60) calendar days before the effective date of such termination.

(2) Termination for Cause.

(a) In the event that either party fails to comply with the provisions of the designation agreement in whole or in part, the other party may, after specifying any alleged breach, default, or non-compliance in writing to the other party and after allowing a reasonable time, but not less than fifteen (15) calendar days for correction thereof, terminate the designation agreement by sending written notice of termination which specifies the reasons for termination to the other party, at least fifteen (15) calendar days prior to the effective date of termination.

(b) If the Department determines that any non-compliance with the terms of the designation agreement on the part of the Protective Services Agency endangers life, health, and safety of recipients or applicants for services under the designation agreement, it shall terminate the designation agreement by orally notifying the Protective Services Agency of termination followed by the mailing of written notification, return receipt requested, setting forth the reasons for termination within seven (7) calendar days follow the oral notification. Termination pursuant to this subsection shall take effect upon the oral notification.

(3) Continuity of Services.

(a) Upon termination of a designation agreement the Department shall designate a new Protective Services Agency in a timely manner;

(b) If necessary to ensure continuity of Protective Services in a Protective Services region, the Department may do the following for a period of up to one hundred and eighty (180) days following termination of designation:

1. Assign the responsibilities of the Protective Services Agency to another agency or organization;
2. Extend the agreement with the terminating agency;
3. Perform the responsibilities of the Protective Services Agency.

5.07: Availability of Funds

In the event that funding to the Department by state appropriation for payment for services covered pursuant to the designation agreement is reduced or terminated by the General Court of the Commonwealth of Massachusetts, so as to prevent the continued funding of all service contracts entered into under the appropriation item governing the designation agreement, the Department may terminate the designation agreement on the provision of written notice containing a specification of the reasons for termination at least thirty (30) days prior to the effective date of such termination.

5.08: Reporting Process/Intake

- (1) The Department shall establish a state-wide telephone system whereby reports of alleged abuse of elderly persons shall be received on a twenty-four (24) hour per day, seven (7) day per week basis.
- (2) Each Protective Services Agency shall have the capacity to receive reports of abuse.
- (3) If not received during regular business hours, reports of abuse received by the Department or the Department's twenty-four (24) hour per day designee(s) shall, depending upon the judgment of the Department, be forwarded to the appropriate Protective Services Agency immediately upon receipt or the commencement of the next regular business hours of the Protective Services Agency.
- (4) Oral reports received by the Department or the Department's twenty-four (24) hour per day designee(s) shall also be transcribed onto a form provided by the Department. Such form shall contain the information required in 651 CMR 5.10, and shall be forwarded to the appropriate designated Protective Services Agency as soon as possible.
- (5) Reports of abuse received by a Protective Services Agency shall be transcribed onto a form provided by the Department (if not received in such a manner) and shall contain the information required in 651 CMR 5.10.
- (6) Written information submitted by the reporter of Abuse to the Department, the Department's twenty-four (24) hour per day designee(s), or any Protective Services Agency shall be submitted to the appropriate Agency as soon as possible after its receipt. Such information shall be transcribed onto the form provided by the Department and become part of the case file.
- (7) The Protective Services Agency or the Department's twenty-four (24) hour per day designee(s) shall forward a copy of the intake form to the Department within forty-eight (48) hours of their receipt of the report.
- (8) At the time the report is received, the Department, the Department's twenty-four (24) hour per day designee(s) or Protective Services Agency shall advise the person reporting as follows:
 - (a) That if they are a mandated reporter as defined in 651 CMR 5.02(24) or 5.02(25), they must forward a written statement of their report of abuse to the agency to which the report was made within forty-eight (48) hours after making the verbal report;
 - (b) That their report is confidential and is subject to state laws and regulations regarding privacy and confidentiality;
 - (c) Mandated reporters subject to fine shall be informed that they will be notified in writing of the action taken in response to the report within forty-five (45) calendar days of the report. Other reporters shall be notified only upon their request. This notice shall include the following information:
 1. Whether or not the information in the report constituted a reportable condition;
 2. Whether or not an assessment was completed;
 3. The name, address and telephone number of the Protective Services Agency conducting the assessment.

5.09: Who Must Report

- (1) Mandated Reporters Subject to Fine. Mandated reporters subject to fine, as defined in 651 CMR 5.02(24) herein, who have reasonable cause to believe that an elderly person is suffering from or has died as a result of Abuse shall immediately make a verbal report of such information or cause a report to be made to the Department or Pro-

5.09: continued

protective Services Agency. Such person shall within forty-eight (48) hours make a written report to the appropriate Protective Services Agency. Executive directors of licensed home health agencies and Homemaker Service agencies shall establish procedures whereby reports of alleged Abuse of an Elderly Person are forwarded to them by staff as soon as possible after they are received. Such procedures shall be in writing.

(2) Mandated Reporter Not Subject to Fine. Mandated Reporters Not Subject to Fine, as defined in 651 CMR 5.02(25) herein, who have reasonable cause to believe that an elderly person is suffering or has died from abuse shall report such case to the executive director of their agency. The executive director shall immediately make a verbal report of such information or cause a report to be made to the Department, the Department's twenty-four (24) hour per day designee(s) or the appropriate Protective Services Agency. Such person shall within forty-eight (48) hours make a written report to the appropriate Protective Services Agency.

(3) Other Reporters. Any other person who has reasonable cause to believe that any elderly person is suffering or has died from abuse may make such a report to the Department, the Department's twenty-four (24) hour per day designee(s), or its Protective Services Agency.

(4) Liability and Retribution Against Reporters.

(a) No employee or supervisor may discharge; demote; transfer; reduce pay, benefits, or work privileges; prepare a negative work performance evaluation, or take any other action detrimental to an employee or supervisor who files a report in accordance with the provisions of M.G.L. c. 19A, ss. 15(a), 15(b), or 15(c), by reason of such report;

(b) No Mandated Reporter Subject to Fine shall be liable in any civil or criminal action by reason of such report;

(c) No Mandated Reporter Not Subject to Fine or other reporter of alleged abuse of an elderly person shall be liable in any civil or criminal action by reason of such report if it was made in good faith.

5.10: Contents of Reports

Each oral and written report shall contain the following information, if known:

(1) The date and time of the report, and of the alleged abuse;

(2) The allegedly abused elderly person's

(a) Name;

(b) Current address;

(c) Permanent address if different from above;

(d) Approximate age or date of birth;

(e) Present whereabouts;

(f) Sex;

(g) The names, addresses, and telephone numbers of the Elderly Person's Caretaker, or close relatives, if known;

(h) The language spoken by the elderly person;

(i) Information regarding the nature and extent of abuse;

(j) Any indication of prior injury(ies), abuse or neglect and, if available, date(s) and time(s) of incident(s);

(k) Whether in the belief of the reporter, the situation reported is one in which the elderly person is living in conditions which present a substantial risk of death or immediate and serious physical injury or serious mental harm;

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- (l) Any medical treatment being received or immediately required, if known;
- (m) The name, address, and telephone number of the reporter, where they can be contacted and their relationship to the alleged abused elderly person if the reporter wishes to provide said information;
- (n) The circumstances under which the person reporting first became aware of the alleged abuse;
- (o) The action taken by the reporter, if any, to assist the abused elderly person;
- (p) A determination of whether the reporter is a Mandated Reporter as defined in 651 CMR 5.02(24) and 5.02(25) herein; and
- (q) Any other information the reporter believes to be relevant to the investigation.

(3) If known, the name, address and current whereabouts of the alleged Abuser and her/his relationship to the allegedly abused elderly person.

5.11: Screening of Reports

(1) Upon receipt of an oral or written report (whichever is received first) the intake worker shall screen the report to determine the appropriate initial response. The purpose of screening is to determine:

- (a) Whether there is reasonable cause to believe that a reportable condition exists; and
- (b) Whether or not an emergency exists.

(2) Determining 651 CMR 5.11(1)(a) and (b) the intake worker shall determine the facts alluded to the definition of Emergency set forth in 651 CMR 5.02(14), Reasonable Cause to Believe set forth in 651 CMR 5.02(39), Reportable Condition set forth in 651 CMR 5.02(39), Serious Physical Injury set forth in 651 CMR 5.02(42), and Serious Emotional Injury set forth in 651 CMR 5.02(41). Caretaker set forth in 651 CMR 5.02(41) and other appropriate provisions of 651 CMR 5.00; and shall utilize any other information obtained during screening. Such information may be obtained through discussion with the reporter, examination of Department or Protective Services Agency files and any collateral contacts necessary to provide corroborative information specific to the reported incident and the elderly person's condition.

5.12: Screening Decisions

- (1) If the intake worker determines:
 - (a) That there is reasonable cause to believe that a reportable condition exists; and
 - (b) That an emergency exists, e.g., that an elderly person is living in conditions which present a substantial risk of death or immediate and serious physical injury or serious mental harm, then the intake worker shall immediately designate the report an Emergency Report and cause the matter to be assigned for an immediate assessment as provided in 651 CMR 5.14.

(2) If the intake worker determines, based on information available in the report and obtained during screening that there is no reasonable cause to believe that a reportable condition exists, the intake form shall be placed in a file and be subject to expungement from the records of the Department and the Protective Services Agency in accordance with 651 CMR 5.29(9). Where appropriate the intake worker shall provide information and referral to the reporter regarding social, legal, health or other services which may be available to the elderly person.

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(a) In cases involving reports from mandated reporters subject to fine and mandated reporters not subject to fine, the intake worker shall not determine that no reasonable cause to believe exists without:

1. Direct discussion with the reporter of Abuse, and
2. The assent of the intake worker's Protective Services Agency's supervisor or the regional supervisor of the Department.

(b) The intake worker may determine with supervisory approval that no reasonable cause to believe exists regarding a report from a nonmandated reporter, pursuant to M.G.L. c. 19A, s. 15(c), based upon:

1. A pattern of prior reports from the reporter which, upon investigation by the Department, or Protective Services Agency, have proved unsubstantial, or
2. Persuasive information obtained by the screener from reliable sources that the report cannot be substantiated.

5.13: Notification to Protective Services Agencies of Reports

(1) If the intake worker determines that the report constitutes an Emergency Report, all information on the report shall be immediately forwarded to the appropriate Protective Services Agency and/or regional supervisor.

(2) If the intake worker determines that the report constitutes a non-emergency report, all information in the report shall be forwarded to the appropriate agency as soon as possible and no later than the next business day.

5.14: Assessment of Reports

(1) An assessment of a report shall be in writing and shall determine:

- (a) The identity of the allegedly abused elderly person;
- (b) The nature, extent, and cause(s) of the alleged serious physical or emotional injury;
- (c) The identity of the person(s) alleged to be responsible for the alleged injuries;
- (d) The pertinent facts or matters which in the opinion of the Protective Services Caseworker are necessary to determine whether or not a reportable condition exists.

(2) The assessment shall include, but not be limited to the following:

- (a) A visit to the residence of the elderly person who is the subject of the report for the purpose of interviewing the person about the allegations of abuse; or, if such a visit is not possible, an in-person interview with such elderly person;
- (b) Utilization and completion of the assessment form provided by the Department;
- (c) Interviews with other members of the elderly person's household;
- (d) Collateral contact with service agencies and individuals involved with the elderly person;
- (e) During the home visit, or in-person interview, written notification shall be given to the elderly person, on a form provided by the Department, that an assessment is being conducted and that (s)he has a right to review the Protective Services file. If an unsuccessful attempt has been made to visit the household, or conduct an in-person interview, the written notice shall be forwarded to the allegedly abused elderly person.

(3) If a caretaker or family member prevents the Protective Services Caseworker from gaining access to the elderly person who is the subject of the report, the Protective Services Caseworker shall immediately inform her/his Protective Services Agency supervisor. The

5.14: continued

Protective Services Agency supervisor shall convene a case conference with the Protective Services Caseworker and other appropriate person(s) for the purpose of determining what appropriate action may be warranted to proceed with the assessment.

(4) The assessment of all emergency reports shall be completed within twenty-four (24) hours following the receipt of the report by the Protective Services Agency. The assessment shall be in writing.

(5) The assessment of a non-emergency report shall be completed within seven (7) calendar days following the receipt of the report. The day of receipt of the report shall be day one (1) of this period.

5.15: Action Upon Finding No Reportable Condition Following Assessment

(1) If, after the assessment of an emergency report or a non-emergency report the Protective Services Caseworker determines that no reportable condition exists, the Protective Services Caseworker, with supervisory approval shall:

(a) Expunge records in accordance with 651 CMR 5.29(9) within three (3) months of such determination; and

(b) Where appropriate, the Protective Services Caseworker shall provide information and referral to the allegedly abused elderly person regarding social, health, legal, or other services which may alleviate the problem of the elderly person;

(c) Set forth the determination of no reportable condition in writing to the reporter, if required under 651 CMR 5.08(8)(c) and to the allegedly abused elderly person, if requested.

5.16: Conducting a Functional Evaluation

If after the assessment of a report the Protective Services Caseworker determines that there is reasonable cause to believe that a reportable condition exists, a functional evaluation of the elderly person shall be conducted. Such functional evaluation shall assess the functional capacity, situation and resources of the abused elderly person. It shall involve, but not be limited to, the following activities:

(1) Determination of the social, physical, and mental situation of the abused elderly person;

(2) One or more interviews with the elderly person, her/his caretaker, and members of the elderly person's household;

(3) Collateral contacts with service agencies and individuals to gather information appropriate to the determination of the service needs of the elderly person;

(4) Completion of the Department's functional evaluation form;

(5) Completion of the functional evaluation within fourteen (14) calendar days after receipt of the report by the Protective Services Agency. In cases of emergency reports, functional evaluations shall be completed within forty-eight (48) hours following the receipt of the report of abuse by the Protective Services Agency.

5.17: Financial Eligibility for Protective Services

(1) Protective Services Casework shall be provided without regard to income to eligible elderly persons.

(2) An eligible elderly person whose protective services service plan requires case management, homemaker, chore, transportation, or other

5.17: continued

services that may be provided under the Commonwealth's Home Care program [as defined in Home Care Programs 651 CMR 3.01(2)] shall be subject to the financial eligibility requirements set forth in 651 CMR 3.03(2) and the determination of need for Home Care requirements [as set forth in 651 CMR 3.03(3)].

(3) One or more of the Commonwealth's Home Care Program Services set forth in 651 CMR 5.17(2) shall be provided to an eligible elderly person who is determined to need the service(s), is income eligible under 651 CMR 3.03(2)(a), and is otherwise eligible for the service(s) without cost to the client.

(4) Such Home Care Service(s) shall be provided to an eligible elderly person who is determined to need the service(s), is income eligible under the Sliding Fee Program [651 CMR 3.03(2)(c)], and is otherwise eligible for the service(s) in accordance with the sliding fee scale and fee collection procedures set forth in 651 CMR 3.03(2)(c).

(5) Home Care Corporations shall not collect fees in excess of the monthly cost of the client's services.

(6) Home Care Corporations shall make reasonable efforts to collect the fees in accordance with 651 CMR 5.17. All fees shall be paid by check or money order payable to the Home Care Corporation through which service is provided.

(7) Home Care Corporations shall remit all fees collected to the Department.

(8) The failure to pay or partial payments of monthly fees by the individuals or families who receive services pursuant to 651 CMR 5.17 shall not affect the eligibility of said individuals and families for such services.

(9) Co-Payment Under Home-Delivered Meals Program. Home-delivered meals shall be provided on a per meal co-payment basis to all eligible elderly persons who are financially eligible in accordance with 651 CMR 3.03(2)(d) and who need such services subject to the following requirements:

(a) Clients who receive home-delivered meals service pursuant to 651 CMR 5.17 shall be requested to pay a co-payment at a rate set at the same level as the suggested contribution for the Title III-C of the Older Americans Act nutrition program within the service area served by the Home Care Corporation.

(b) Home Care Corporations or home-delivered meals providers shall not collect co-payments in excess of the cost per meal approved by the Department.

(c) Home Care Corporations and/or the home delivered meals providers shall use due diligence to ensure that fees are collected in accordance with 651 CMR 5.17.

(d) The failure to pay or the partial payment of such fees by clients who receive home-delivered meals pursuant to 651 CMR 5.17 shall not affect the eligibility of said clients for such services. Such services shall not be denied on this account.

(10) An eligible elderly person whose service plan requires case management, homemaker, chore, transportation and other services that may be provided under the Commonwealth's Home Care Program, whose annual gross income is above the Sliding Fee Program limits, and who is determined to need the service(s), shall receive such services in accordance with the following:

5.17: continued

One Person Family

<u>Annual Gross Income</u>	<u>Charge to be Billed to Eligible Elderly Persons</u>
\$ 8,761 and up	Full Cost of Service

Two Person Families

<u>Annual Gross Income</u>	<u>Charge to be Billed to Eligible Elderly Persons</u>
\$ 11,446 and up	Full Cost of Service

Three Person Families

<u>Annual Gross Income</u>	<u>Charge to be Billed to Eligible Elderly Persons</u>
\$ 14,131 and up	Full Cost of Service

Four Person Families

<u>Annual Gross Income</u>	<u>Charge to be Billed to Eligible Elderly Persons</u>
\$ 16,814 and up	Full Cost of Service

(11) Home Care Corporations shall make reasonable efforts to collect the charges in accordance with 651 CMR 5.17. All charges shall be paid by check or money order payable to the Home Care Corporation through which the service is provided. The Home Care Corporation shall remit all charges collected to the Department. The failure to pay or partial payment of monthly charges by individuals or families who receive services pursuant to 651 CMR 5.17 shall not affect the eligibility of said individuals and families for such services.

(12) No eligible elderly person shall be required to reimburse the Department for fees or charges for Protective Services provided unless he or she has been notified of such fee or charge prior to the commencement of service provision. Reasonable efforts to collect such fees or charges shall be made on a monthly basis following the provision of services.

(13) Protective Services other than those mentioned in 651 CMR 5.17(1) through 5.17(8) shall be provided or arranged for by the Protective Services Agency subject to appropriation, and subject to the financial and other eligibility criteria of the government agency or private organization providing such service(s).

5.18: Development of a Service Plan

(1) Based on the functional evaluation and other pertinent information, the service plan shall describe, in writing, actions and services needed to eliminate or alleviate abuse. Actions and services may be provided by caseworkers, elderly persons, caretakers, relatives, friends, human service and health services professionals, and others depending on needs and availability of resources. The service plan shall include, but is not limited to, the following:

- (a) Statement(s) of the major problem(s) contributing to abuse;
- (b) Statement(s) of major casework objective(s) whose accomplishment will partially or completely alleviate or eliminate abuse;
- (c) Statement(s) of major activities and services necessary to accomplish casework objectives. Such statement shall include a description of services already being received by the elderly person.

5.18: continued

(2) The service plan shall utilize the least restrictive alternatives and shall be subject to consent by the abused elderly person in accordance with the provision of M.G.L. c. 19A, ss. 20(a) and/or (b).

5.19: Obtaining Consent for Protective Services

(1) A Protective Services Agency shall not provide Protective Services to an elderly person who suffers from a reportable condition and who needs such service(s) unless they have obtained one of the following:

- (a) The written consent by the elderly person, or;
- (b) If the elderly person lacks the capacity to consent, authorization for the provision of service(s) in accordance With M.G.L. c. 19A, ss. 20(a) or (b).

(2) The consent shall include, but not be limited to a description of all services to be provided or arranged for, including:

- (a) Unit of service provided per time period (e.g., hours/weeks);
- (b) Duration of services;
- (c) Names and addresses of agencies to be providing services;
- (d) Statement of any fee(s) assessed to the elderly person.

(3) In an emergency, service(s) may be provided with the verbal consent or by an affirmative act of the abused elderly person or guardian and the approval of the Protective Services Caseworker and her/his supervisor. The Protective Services Agency shall attempt to obtain written consent as soon as possible thereafter.

5.20: Implementation of Service Plan with Client's Consent

Upon receipt of consent from the abused elderly person or properly appointed fiduciary for the provision of one or more Protective Services, the Protective Services Caseworker shall:

(1) Provide or arrange for the provision of one or more services in accordance with the services plan, the financial eligibility of the elderly person for services funded through agencies other than the Department, and the availability of resources.

(2) Document the utilization of Protective Services by the eligible elderly person, as well as the unavailability of certain services or her/his inability to obtain certain services.

(3) Document the accomplishment of activities taken to alleviate or eliminate the abuse of the elderly person.

5.21: Actions When Consent Not Available

(1) If a Protective Services Caseworker has reasonable cause to believe that a reportable condition exists and the abused elderly person refuses to consent or withdraws consent, no Protective Services shall be provided or continued except as provided in 651 CMR 5.22 through 5.24.

(2) Upon a refusal to consent, or withdrawal of consent to Protective Services by an abused elderly person who has the capacity to consent; or upon the decision of the Court not to appoint a protector, or other fiduciary of an abused elderly person under M.G.L. c. 19A, s. 20(a) or to issue an order for Protective Services, the Protective Services Caseworker shall do the following:

- (a) Notify the elderly person of the availability of Protective Services should she/he decide to consent to services at a future time;

5.21: continued

- (b) Offer to the elderly person continuing Protective Services Casework;
- (c) Advise the elderly person of the availability of home care and other social services in her/his area;
- (d) Advise the elderly person of the availability of free legal services in her/his area;
- (e) Explain the availability of M.G.L. c. 209A and other appropriate legislation to protect her/him from further abuse in family and household abuse situations.

5.22: Actions If Client Lacks the Capacity to Consent/Emergency Report

(1) The Protective Services Agency or the Department may petition the Court for an Emergency order of Protective Services under M.G.L. c. 19A, s. 20(b) specifying those services necessary to remove the condition creating the emergency if, as the result of an assessment and evaluation of an emergency report and the development of a written service plan, the Protective Services Agency or the Department has reasonable cause to believe:

- (a) That a reportable condition exists;
- (b) That an emergency exists, i.e., the elderly person is living in conditions which present a substantial risk of death or immediate and serious physical or mental harm;
- (c) That the elderly person is in need of one or more Protective Services to remove the conditions creating the emergency;
- (d) That an attempt has been made to obtain written consent for the provision of one or more Protective Services and the elderly person has not so consented; and
- (e) That the elderly person has not consented because she/he lacks the capacity to consent to the provision of one or more Protective Services needed to remove the conditions creating the emergency.

(2) A member of the immediate family, or caretaker of the elderly person may also petition to the Court for such an order if they have reasonable cause to believe that the conditions set forth in 651 CMR 5.22(1)(a) through (e) exist. A member of the immediate family or caretaker is encouraged to report the alleged abuse to the Department, the Department's twenty-four (24) hour per day designee, or Protective Services Agency and seek an emergency assessment and evaluation of the situation and condition of the elderly person prior to filing a petition with the Court for an emergency order for Protective Services under M.G.L. c. 19A, s. 20(b).

(3) The petition for an Emergency order for Protective Services under M.G.L. c. 19A, s. 20(b) shall set forth the facts and attesting documentation required by the Court and be in accordance with procedures developed by the Court.

(4) If, after the hearing, the Court determines, based on clear and convincing evidence, that the elderly person has been or is being abused, that an emergency exists, and that the elderly person lacks the capacity to consent to the provision of services; then, the Court may issue an emergency order for Protective Services. This shall remain in effect for a period not to exceed seventy-two (72) hours. If necessary, the petitioner may request that the Court extend such order for an additional seventy-two (72) hour period.

5.23: Actions If Client Lacks the Capacity to Consent/Non-Emergency Report

(1) The Protective Services Agency or the Department may petition the Court for the appointment of a protector, or other fiduciary for purposes of consent to Protective Services under M.G.L. c. 19A, s. 20(a) and/or for an order of Protective Services under M.G.L.

5.23: continued

c. 19A, s. 20(a) if, as the result of an assessment and evaluation of a non-Emergency report and the development of a written service plan, the Protective Services Agency or the Department has reasonable cause to believe:

- (a) That a reportable condition exists;
- (b) That the elderly person is in need of one or more Protective Services;
- (c) That an attempt has been made to obtain written consent to the provision of one or more Protective Services and the elderly person has not so consented;
- (d) That either the elderly person has not consented because she/he lacks the capacity to consent to the provision of one or more Protective Services; or
- (e) No legally authorized other person is available or willing to consent to the provision of one or more Protective Services.

(2) The petition for appointment of a protector or other fiduciary and/or order for Protective Services shall set forth the facts and attesting documentation required by the Court and be in accordance with procedures developed by the Court. Such petition will seek the appointment of the least restrictive form of fiduciary representation that will satisfy the needs of such elderly person.

(3) The elderly person who is the subject of the petition shall have the right to be present, and be represented by Counsel;

(4) If, after a hearing the Court determines, based upon clear and convincing evidence, that a reportable condition exists, that the elderly person is in need of Protective Services and lacks the capacity to consent and no other person who is authorized to consent is available or willing to consent, the Court may appoint a protector, or other fiduciary authorized to consent to the provision of Protective Services.

5.24: Provisions Applicable to Petitions to the Court Under M.G.L. c. 19A, ss. 20(a) or 20(b)

(1) Petitions to the Court for the appointment of protector, guardian, conservator, other fiduciary or order for Protective Services pursuant to M.G.L. c. 19A, ss. 20(a) and/or 20(b) may, if required by the Court and subject to appropriation, be accompanied by a report of a geriatric evaluation as defined in 651 CMR 5.02(16). This report may consist of the following:

- (a) The name and address of the place where the elderly person is residing and of the person or agency, if any, who is providing services at present;
- (b) A description of the treatment and services, if any, presently being provided to the elderly person;
- (c) A statement that an appropriately licensed medical, psychological, and/or social work professional has examined said elderly person;
- (d) An evaluation of the elderly person's present physical, mental and social condition;
- (e) An opinion of whether, based on the evaluation of the elderly person's present physical, mental and social condition, she/he lacks the capacity to consent to the provision of Protective Services;
- (f) A recommendation concerning the least restrictive course of services, care or treatment consistent with the person's needs.

(2) Such elderly person shall have the right, at her/his own expense, to secure an independent medical and psychological or psychiatric examination relevant to the issue involved in any hearing under M.G.L. c. 19A, ss. 20(a) or 20(b) and to present a report of his independent evaluation or the evaluator's personal testimony as evidence at the hearing.

5.24: continued

- (3) The protector, or other fiduciary appointed pursuant to M.G.L. c. 19A, s. 20(a), or individual or organization to whom an emergency order for Protective Services under M.G.L. c. 19A, s. 20(b) is directed shall cause a copy of their appointment by the Court, and the Emergency order, or other order of Protective Services to be placed in the Protective Services case file of the eligible elderly person as soon as possible after said appointment and order are granted.
- (4) The Protective Services Caseworker shall develop and implement a service plan for the provision of one or more Protective Services in accordance with the emergency order as soon as possible after M.G.L. c. 19A, ss. 20(a) or 20(b) orders are granted.
- (5) Where funds are not available through appropriation from the Department to directly provide one or more Protective Services under M.G.L. c. 19A, ss. 20(a) and 20(b), the Protective Services Agency shall coordinate with and utilize existing social, health, mental health, legal and other resources to provide services under a service plan.
- (6) The Protective Services Agency shall insure that the services of such persons already familiar with the elderly person shall be obtained for this purpose whenever possible.

5.25: Follow-Up and Reassessment of Protective Services Plan

- (1) After the initiation of one or more Protective Services, the Protective Services Caseworker shall maintain periodic contact with the eligible elderly person to:
 - (a) Assess whether the services provided to the eligible elderly person are meeting her/his needs;
 - (b) Ascertain if the services are being provided in a manner acceptable to the eligible elderly person; and,
 - (c) Determine and make necessary changes in the level, amount, and/or type of services deemed appropriate by the Protective Services Caseworker which has not already been set forth in the initial service plan.
- (2) After the commencement of Protective Services, reassessment of an eligible elderly person's need for services shall be accomplished at least once during the first month of service. After the initial month, each eligible elderly person's need for services shall be reassessed at least every two (2) months thereafter until such service(s) are no longer required. Any changes in the service pattern, including an increase, reduction, termination, or suspension of service other than those set forth in the initial plan, made as a result of those periodic reviews, shall be reflected in the service plan.
- (3) Service Authorization. The Protective Services Agency, subject to appropriation and the availability of funding through the Department, shall issue a written service authorization to a vendor in order to initiate services to a client or to make changes in the level, amount, and/or type of services to the eligible elderly person. Such authorization to the vendor may be in effect for six (6) months. The service level and the type shall be reassessed at least every two (2) months and the authorized service shall be changed as necessary. If the circumstances of the client, as determined through the Comprehensive Needs Assessment Procedure (CNAP), are such that a six (6) month authorization is not necessary, the Protective Services Agency may restrict authorization to the vendor for a shorter period of time. For Protective Services not funded through the Department, the Protective Services Caseworker shall seek service authorization through the appropriate agency or organization in accordance with their procedures.

5.26: Providing Documentation of Casework and Services

Written documentation describing the Protective Services Caseworker's actions, contacts, and findings shall be maintained in the protective service file. These should be kept current to within five (5) business days of contacts or actions. Documentation shall include, but not be limited to:

- (1) Intake information regarding reports and collateral contacts;
- (2) Assessment information describing causes, incidences, nature, and extent of abuse;
- (3) Functional evaluation information describing social, physical, and mental status of the eligible elderly person;
- (4) Descriptions of actions taken by the caseworker and/or others to alleviate or eliminate Abuse, including contacts with the eligible elderly person and others;
- (5) Description of activities of other persons and agencies providing services or assistance to the eligible elderly person;
- (6) Identification of sources of information concerning the eligible elderly person's social, physical and/or mental situation and other pertinent matters;
- (7) Supporting documentation such as reports, evaluations, and investigations obtained from case managers, nurses, doctors, lawyers, psychotherapists, police officers, coroners, and other professionals;
- (8) Service plan and consent for services describing services recommended, provided or arranged.

5.27: Reporting to District Attorneys and Time Frames for Reporting

- (1) If the Department or its Protective Services Agencies have reasonable cause to believe that an elderly person has died as a result of Abuse, the death shall immediately be reported verbally to the District Attorney of the County in which the elderly person resided. Written notification shall be forwarded to the District Attorney as soon as possible.
- (2) If an assessment results in a determination that an elderly person has suffered serious abuse as defined herein in 651 CMR 5.02(40), the Department or Protective Services Agency shall report such determination verbally to the District Attorney of the County within which the elderly person resides within forty-eight (48) hours of the completion of such determination. A written report shall be forwarded to the District Attorney as soon as possible.

5.28: Financial and Administrative Responsibilities of Protective Services Agencies Under the Protective Services Program

The Protective Services Agency shall establish financial systems and procedures which comply with the provisions contained in Title 45 Code of Federal Regulations Part 74 (Administration of Grants), Subpart H (Standards for Grantee and Sub-Grantee Financial Management Systems) as well as requirements developed by the Department.

5.29: Privacy and Confidentiality Requirements

- (1) Generally. All records containing Personal Data concerning elderly persons for whom a report of alleged Abuse has been made under M.G.L. c. 19A, s. 15 to the Department, the Department's twenty-four (24) hour per day designee(s), Protective Services Agen-

5.29: continued

cies or other agencies holding Personal Data shall be governed by M.G.L. c. 66A, the Privacy and Confidentiality Regulations of the Department, 651 CMR 2.00 et seq., and 651 CMR 3.00 shall apply to the Department, the Department's twenty-four (24) hour per day designee(s), and Protective Services Agencies as Holder(s) of Personal Data.

(2) Agreement With Holder of Personal Data. The Department shall enter into an agreement with its twenty-four (24) hour per day designee(s) and each Protective Services Agency whereby each Protective Services Agency and designee(s) agrees to act as a holder of personal data and comply with the aforementioned regulations regarding the holding of personal data as a result of performing a governmental or public function or purpose.

(3) Separate Personal Data System. Each holder of personal data under the Protective Services Program shall establish a separate Personal Data System for the implementation of its Protective Services Program in compliance with the aforementioned law and regulations regarding personal data.

(4) Access to Personal Data by Third Parties. Each holder maintaining personal data shall not allow any agency or individual other than the employees of the Department or other holder agency under the Protective Services Program to gain access to personal data unless such access is authorized by statute or regulations, or is authorized by the Data Subject whose personal data is sought with the following exception:

Medical or psychiatric data may be made available to a physician treating a data subject upon the request of said physician, if a medical or psychiatric emergency arises which precludes the data subject's giving approval for the release of such data, but the data subject shall be given notice of such access upon termination of the emergency.

(5) Access to Personal Data by Data Subject. The Department, any Protective Services Agency, or any other agency obligated to make an assessment under the Protective Services Program shall inform an individual in writing, upon her/his request, whether she/he is a data subject with respect to records created or maintained under the Protective Services Program, and if so, the Department or the Protective Services Agency shall make such data fully available to her/his authorized representative upon her/his request in a form comprehensible to her/him with the following exceptions:

(a) A Holder may withhold from a data subject information which is currently the subject of an investigation if disclosure would prejudice the possibility of effective law enforcement and not be in the public interest. Information may be withheld for the time it takes for the Holder to complete its investigation and commence an administrative or judicial proceeding, or one (1) year, whichever comes first.

(b) In making a disclosure, the holder may remove personal identifiers relating to a third person, except where such third person is an officer or employee of government or agency holder of personal data under the Protective Services Program.

(6) Approval by Data Subject. The approval of the data subject which is required prior to granting access to records herein may be granted in writing or orally, including by telephone; however, the Department shall make reasonable efforts to verify the data subject's identity; and shall, if no written consent is given, file a record of any oral approval together with the personal data held.

5.29: continued

(7) Penalties for Violating Confidentiality Regulations. Any agent or employee of the Department, a Protective Services Agency, or any other holder agency obligated to make an assessment under the Protective Services Program who violates the confidentiality regulations set forth herein shall be subject to the following penalties, pursuant to M.G.L. c. 19A, s. 23(d):

- (a) A fine of not more than five hundred (500) dollars;
- (b) A fine of not more than one thousand (1,000) dollars if harm shall have resulted to anyone whose privacy was sought to be protected by the provision violated;
- (c) If such agency or employee is employed by the Commonwealth, he shall also be subject to reprimand, suspension, dismissal, or other disciplinary action pursuant to the enforcement sanctions set forth in the Department's Privacy and Confidentiality Regulations, 651 CMR 2.05.

(8) Access to Confidential Records During Court Proceedings.

(a) In all proceedings brought under M.G.L. c. 19A, ss. 20(a) and 20(b) or M.G.L. c. 201 in which the Department or Protective Services Agency is a party, a copy of the entire Protective Services case file, including the pertinent M.G.L. c. 19A, ss. 15(a), 15(b) or 15(c) reports, and M.G.L. c. 19A, s. 18(a) assessment and evaluation shall be made available, upon written request, to any of the following:

- 1. A Court appointed guardian ad litem;
- 2. An officer of the Court assigned by the judge;
- 3. An attorney for the petitioner seeking appointment as a Protector or other fiduciary under M.G.L. c. 19A, s. 20(a) for a M.G.L. c. 19A, s. 20(b) order; for guardianship or conservatorship of the abused elderly person; an attorney for the Department, Protective Services Agency, or elderly person.

(b) The written request shall contain a statement from the requesting party that any material disclosed shall not be further duplicated nor divulged to any person not a party to the particular proceeding, unless by order of the Court. Reasonable fees for copying records shall be charged.

(c) Whenever the Department or a Protective Services Agency has reason to believe that disclosure to any individual named above of all or a portion of the Protective Services case file would be contrary to the elderly person's best interest, the Department or Protective Services Agency shall bring to the Court's attention the reason(s) for denying access.

(9) Expungement of Reports and Evaluations. The Department, Protective Services Agency, and any other agency holding personal data obligated to make an assessment under the Protective Services Program shall expunge all personal data within its control regarding a data subject where a report of alleged abuse cannot be substantiated. The holder shall, within three (3) months of such determination:

- (a) Destroy said report and any other records containing personal data created because of the receipt of said report; or
- (b) Physically remove therefrom all personal identifiers; provided however, that the agency holding personal data obligated to make assessment may create and hold whatever statistical records it needs for purposes of planning and reporting.

5.30: Non-Discrimination in Service Delivery

Neither the Protective Services Agency nor its subcontractors or subgrantees shall deny services to or otherwise discriminate in the delivery of services to any person who otherwise meets the eligibility criteria for the Protective Services Program, on the basis of race, color, religion, sex, age, national origin, ancestry, physical or mental handicap or because such a person is a recipient of federal, state, or

5.30: continued

local public assistance or housing subsidies. A Protective Services Agency shall comply with all applicable provisions of:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and
- (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the regulations promulgated thereunder, (45 CFR 85); and
- (3) M.G.L. c. 151B, s. 4(10)

5.31: Non-Discrimination in Employment

Neither the Protective Services Agency nor its subcontractors or subgrantees shall discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion or physical or mental handicap. They shall comply with all applicable provisions of:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and
- (2) M.G.L. c. 151B, s. 4(1); and
- (3) Department of Elder Affairs, 651 CMR 8.00 - Discrimination Based on Age in Agencies and Organization in Receipt of Funds from the Department of Elder Affairs; and
- (4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the regulations promulgated pursuant thereto (45 CFR 85).

5.32: Protection of Clients

The Protective Services Agency and its subcontractors and subgrantees shall comply with the applicable provisions of the Department of Elder Affairs' Regulations Governing the Protection of Clients Who are Participants in Research Projects (651 CMR 7.00).

5.33: Affirmative Action

The Protective Services Agency shall have in effect, maintain and adhere to a current Affirmative Action Plan which fulfills the applicable requirements of the Governor's Executive Order.

5.34: Waivers

(1) Waiver-Request by Secretary. The Secretary of the Department may, in his discretion, waive one or more of the requirements of 651 CMR 5.00 if necessary to preserve the public health, safety or welfare, and if such a waiver would not violate any applicable federal or state law or regulation. Such a waiver shall clearly identify that section of the Protective Services Program regulations to be waived; the conditions that have made such a waiver necessary; the steps that have been taken to insure that future waivers will not be necessary; the consequences to the Protective Services Program or Eligible Elderly Persons of not granting the waiver request.

(2) Other Waivers. All other requests for waivers shall be made in writing to the Secretary by the President of the Board of Directors or Chief Executive Officer of the organization making such a request and shall set forth the information required in the second sentence of paragraph one above.

651 CMR: DEPARTMENT OF ELDER AFFAIRS

5.35: Annual Report

The Department shall report annually on its activities and the activities of designated agencies providing Protective Services to eligible elderly persons under the Protective Services Program. Such report shall be submitted to the Governor, the General Court and the public no later than one hundred and twenty (120) days following the end of each fiscal year. The contents of such report shall include, but not be limited to:

- (1) Statistical information about the number and types of reports received during the prior fiscal year;
- (2) Aggregate information indicating the results of the assessments and evaluations conducted by Protective Service Agencies;
- (3) Information on the types and costs of services provided under the authority of 651 CMR 5.00 during the prior fiscal year.

REGULATORY AUTHORITY

651 CMR 5.00: M.G.L. c. 19A, ss. 6, 16(d), 16(e), 18(a), 22 and 25.

APPENDIX C

APPENDIX C

EXECUTIVE OFFICE OF ELDER AFFAIRS
PROTECTIVE SERVICES AGENCIES

*Baypath Senior Citizens
Services, Inc.

P.O. Box 2625

Central Station

Framingham, MA 01701

(617) 620-0840; Toll Free: (800) 448-0110

Evelyn Jefts, President

Donald Medd, Director

Ashland, Dover, Framingham, Holliston,
Hopkinton, Hudson, Marlborough, Natick,
Northborough, Sherborn, Southborough,
Sudbury, Wayland, and Westborough.

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*Bristol Elder Services, Inc.

182 North Main Street

Fall River, MA 02720

(617) 675-2101

Ethel S. O'Brien, Chairman

Carol Nagle, Director

Attleboro, Berkley, Dighton, Fall River,
Freetown, Mansfield, North Attleboro, Norton,
Raynham, Rehoboth, Seekonk, Somerset,
Swansea, Taunton, and Westport.

=====

Central Boston Elder Services, Inc.

812 Huntington Avenue

Boston, MA 02115

(617) 277-7416

Lois Hunter, President

Paul McLaughlin, Director

Allston, Back Bay, Brighton, Fenway,
Jamaica Plain, North Dorchester, Parker Hill,
Roxbury, and South End.

=====

*Chelsea/Revere/Winthrop

Elder Services

300 Broadway

P.O. Box 189

Revere, MA 02151

(617) 286-0550

Abraham Cohen, President

James P. Cunningham, Jr., Director

Chelsea, Revere, and Winthrop.

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*Coastline Elderly Services, Inc.

106 Huttleston Avenue

Fairhaven, MA 02719

(617) 999-6400

John E. Keary, President

Charles Sisson, Director

Acushnet, Dartmouth, Fairhaven, Gosnold,
Marion, Mattapoisett, New Bedford, and
Rochester.

Executive Office of Elder Affairs
Protective Services Agencies

Elder Home Care Services of
Worcester Area, Inc.
1241 Main Street
Worcester, MA 01603
(617) 756-1545
James Fanale, M.D., President
Lois Green, Director

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Auburn, Barre, Boylston, Grafton,
Hardwick, Holden, Leicester, Millbury,
New Braintree, Oakham, Paxton, Rutland,
Shrewsbury, West Boylston, and Worcester.

*Elder Services of Berkshire
County, Inc.
100 North Street
Pittsfield, MA 01201
(413) 499-1353;
Toll Free: (800) 292-5011
Francis Wilson, President
Frederick H. Whitham, Director

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Adams, Alford, Becket, Cheshire, Clarksburg,
Dalton, Egremont, Florida, Great Barrington,
Hancock, Hinsdale, Lanesborough, Lee, Lenox,
Monterey, Mount Washington, New Ashford,
New Marlborough, North Adams, Otis, Peru,
Pittsfield, Richmond, Sandisfield, Savoy,
Sheffield, Stockbridge, Tyringham, Washington,
West Stockbridge, Williamstown, and Windsor.

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*Elder Services of Cape Cod
and the Islands, Inc.
68 Route 134
South Dennis, MA 02660
(617) 394-4630;
Toll Free: (800) 352-7178
Milton Adolphus, President
Sarah Fogerty, Director

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Barnstable, Bourne, Brewster, Chatham,
Chilmark, Dennis, Eastham, Edgartown,
Falmouth, Gay Head, Harwich, Mashpee,
Nantucket, Oak Bluffs, Orleans, Provincetown,
Sandwich, Tisbury, Truro, Wellfleet, West
Tisbury, and Yarmouth.

*Elder Services of the Merrimack
Valley, Inc.
420 Common Street
Lawrence, MA 01840
(617) 683-7747;
Toll Free: (800) 892-0890
Beth Kalhauser, President
Rosanne DiStefano, Director

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Amesbury, Andover, Billerica, Boxford,
Chelmsford, Dracut, Dunstable, Georgetown,
Groveland, Haverhill, Lawrence, Lowell,
Merrimack, Methuen, Newbury, Newburyport,
North Andover, Rowley, Salisbury, Tewksbury,
Tyngsborough, Westford, and West Newbury.

*Franklin County Home Care Corp.
Central Street
Turner Falls, MA 01376
(413) 863-9565
Linda Wilcox, President
Janice L. Gibeau, Ph.D., Director

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Ashfield, Athol, Bernardston, Buckland,
Charlemont, Colrain, Conway, Deerfield,
Erving, Gill, Greenfield, Hawley, Heath,
Leverett, Leyden, Monroe, Montague, New Salem,
Northfield, Orange, Petersham, Phillipston,
Rowe, Royalston, Shelburne, Shutesbury,
Sunderland, Warwick, Wendell, and Whately.

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*Greater Lynn Senior Services, Inc.
8 Silsbee Street
Lynn, MA 01901
(617) 599-0110
Vincent P. O'Brien, President
Vince Lique, Director

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Lynn, Lynnfield, Nahant, Saugus, and
Swampscott.

Executive Office of Elder Affairs
Protective Services Agencies

*Greater Springfield Senior
Services, Inc.
66 Industry Avenue
Springfield, MA 01104
(413) 781-8800
William G. Sheehan, President
Patricia K. Clark, Director
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Agawam, Brimfield, East Longmeadow, Hampden,
Holland, Longmeadow, Monson, Palmer,
Springfield, Wales, West Springfield, and
Wilbraham.

*Health & Social Services
Consortium, Inc. (HESSCO)
IGO Building
Carpenter Street
Foxborough, MA 02035
(617) 769-7440; 543-2611; Toll Free: (800) 462-5221
Kathleen Wright, President
Mary Jean McDermott, Director
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Canton, Dedham, Foxborough, Medfield, Millis,
Norfolk, Norwood, Plainville, Sharon, Walpole,
Westwood, and Wrentham.

*Highland Valley Elder Services, Inc.
320 Riverside Drive
Northampton, MA 01060
(413) 586-2000;
Toll Free: (800) 322-0551
Edward J. Lawton, Jr., President
Robert V. Gallant, Director
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Amherst, Blandford, Chester, Chesterfield,
Cummington, Easthampton, Goshen, Granville,
Hadley, Hatfield, Huntington, Middlefield,
Montgomery, Northampton, Pelham, Plainfield,
Russell, Southampton, Southwick, Tolland,
Westfield, Westhampton, Williamsburg, and
Worthington.

*Holyoke/Chicopee Regional Senior
Services Corporation
198 High Street
Holyoke, MA 01040
(413) 538-9020;
Hot Line: (800) 462-2301
(Mr.) Rene Fortier, President
Priscilla L. Chalmers, Director
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Belchertown, Chicopee, Granby, Holyoke,
Ludlow, South Hadley, and Ware.

*Minuteman Home Care Corporation
83 Hartwell Avenue
Lexington, MA 02173
(617) 862-6200; 263-8720
Cynthia Seavey, President
Joan Butler-West, Director
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Acton, Arlington, Bedford, Boxborough,
Burlington, Carlisle, Concord, Harvard,
Lexington, Lincoln, Littleton, Maynard,
Stow, Wilmington, Winchester, and Woburn.

Montachusett Home Care Corporation
545 Westminster Street
Fitchburg, MA 01420
(617) 345-7312
Margaret Kielty, President
Eleanor Gilmartin, Director
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Ashburnham, Ashby, Ayer, Berlin, Bolton,
Clinton, Fitchburg, Gardner, Groton,
Hubbardston, Lancaster, Leominster, Lunenburg,
Pepperell, Princeton, Shirley, Sterling,
Templeton, Townsend, Westminster, and Winchendon.

Executive Office of Elder Affairs
Protective Services Agencies

*Mystic Valley Elder Services, Inc.
661 Main Street, Suite 110
Malden, MA 02148
(617) 324-7705
Edith O'Leary, President
Daniel O'Leary, Director

Everett, Malden, Medford, Melrose, North
Reading, Reading, Stoneham, and Wakefield.

Health and Educational Services
North Shore Community Mental
Health Agency
162 Federal Street
Salem, MA 01970

Danvers, Marblehead, Middleton, Peabody, and
Salem.

*Old Colony Elderly Services, Inc.
144 Main Street
Brockton, MA 02401
(617) 584-1561; 697-3338;
586-3700; Toll Free: (800) 242-0246
Beatrice Calderwood, President
Edward T. Donovan, Director

Abington, Avon, Bridgewater, Brockton, Carver,
Duxbury, East Bridgewater, Easton, Halifax,
Hanover, Hanson, Kingston, Lakeville,
Marshfield, Middleborough, Pembroke, Plymouth,
Plympton, Rockland, Stoughton, Wareham,
West Bridgewater, and Whitham.

*Old Colony Planning Council
47 West Elm Street
Brockton, MA 02401
(617) 583-1833
John J. DeMarco, President
Daniel M. Crane, Director

Abington, Avon, Bridgewater, Brockton, Carver,
Duxbury, East Bridgewater, Easton, Halifax,
Hanover, Hanson, Kingston, Lakeville,
Marshfield, Middleborough, Pembroke, Plymouth,
Plympton, Rockland, Stoughton, Wareham,
West Bridgewater, and Whitham.

*Senior Home Care Services, Inc.
2 Main Street
Gloucester, MA 01930
(617) 281-1750
Shirley Needham, President
Guntis Licis, Director

Beverly, Essex, Gloucester, Hamilton, Ipswich,
Manchester, Rockport, Topsfield, and Wenham.

Executive Office of Elder Affairs
Protective Services Agencies

Senior Home Care Services
Boston III, Inc.
600 Washington Street (6th Floor)
P.O. Box 29
Boston, MA 02112
(617) 451-6400
Henrietta Murray, President
Terry Ann Lunt, Exec. Director

Beacon Hill/West End, Charlestown, Chinatown,
Columbia Point, Dorchester, East Boston,
East Mattapan, North End, and South Boston.

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*Somerville/Cambridge Elder
Services, Inc.
One Davis Square
Somerville, MA 02144
(617) 628-2601; 2602
TDD: (628-1705)
Mary Mullen, President
John F. O'Neill, Director

Cambridge and Somerville.

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*South Shore Elder Services, Inc.
639 Granite Street
Braintree, MA 02184
(617) 749-6832; 383-9790; 848-3910
June Williams, President
Susan Young, Director

Braintree, Cohasset, Hingham, Holbrook, Hull,
Milton, Norwell, Quincy, Randolph, Scituate,
and Weymouth.

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Southwest Boston Senior
Services, Inc.
23 Florence Street
Roslindale, MA 02131
(617) 325-6565; 6566
Elisabeth von den Benken, President
Eileen Cohen-Bogle, Director

Hyde Park, South Jamaica Plain, Roslindale,
West Roxbury, and West Mattapan.

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Tri-Valley Elder Services, Inc.
284 Worcester Street
Southbridge, MA 01550
(617) 764-2501
Toll Free 1-800-462-5225
William Walker, President
Bernard Gagnon, Director

Bellingham, Blackstone, Brookfield, Charlton,
Douglas, Dudley, East Brookfield, Franklin,
Hopedale, Medway, Mendon, Milford, Milville,
Northbridge, North Brookfield, Oxford,
Southbridge, Spencer, Sturbridge, Sutton,
Upton, Uxbridge, Warren, Webster, and
West Brookfield.

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*West Suburban Elder Services, Inc.
Parker Office Building
124 Watertown Street
Watertown, MA 02172
(617) 926-4100
Fred Alexander, President
Carol Oram, Acting Director

Belmont Brookline, Needham, Newton, Waltham,
Watertown, Wellesley, and Weston.

